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**SENATE BILL NO. 454**

Offered January 14, 2004

Prefiled January 14, 2004

*A BILL to amend the Code of Virginia by adding a section numbered 10.1-1316.1 and by adding in Title 10.1 a chapter numbered 21.2, consisting of sections numbered 10.1-2135, 10.1-2136 and 10.1-2137, relating to enforcement for severe ozone nonattainment areas and the deposit of emission fees in the Virginia Natural and Historic Resources Fund.*

Patron—Whipple

Referred to Committee on Agriculture, Conservation and Natural Resources

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 10.1-1316.1 and by adding in Title 10.1 a chapter numbered 21.2, consisting of sections numbered 10.1-2135, 10.1-2136 and 10.1-2137, as follows:**

*§ 10.1-1316.1. Severe ozone nonattainment areas; fees.*

*A. Except as provided in subsection C, any owner of a stationary source that emits or has the potential to emit 25 tons or more per year of volatile organic compounds or 25 tons or more of nitrogen oxides and is located in an area designated by the U.S. Environmental Protection Agency as a severe ozone nonattainment area shall pay a fee to the Department for deposit in the Natural and Historic Resources Fund, established pursuant § 10.1-2136, if the area fails to attain the ambient air quality standard for ozone by the applicable attainment date established pursuant to 42 U.S.C. §§ 7502 and 7511 of the Clean Air Act. Such fees shall be assessed for emissions in each year calendar year beginning in the year after the attainment date and for each calendar year thereafter as set forth in this section and shall continue until the area is redesignated as an attainment area for the ozone standard.*

*B. The fee shall be determined in accordance with the following:*

*1. The fee shall equal \$5,000, adjusted in accordance with subdivision B 3, per ton of volatile organic compounds and nitrogen oxides emitted by the stationary source during the previous calendar year in excess of 80 percent of the baseline amount, computed under subdivision B 2.*

*2. For purposes of this section, the baseline amount shall be the lower of (i) the amount of actual volatile organic compounds and nitrogen oxide emissions or (ii) the amount of volatile organic compounds and nitrogen oxide emissions allowed under the permit applicable to the stationary source during the attainment year, or, if no such permit has been issued for the attainment year, the amount of volatile organic compounds and nitrogen oxide emissions allowed under the applicable implementation plan during the attainment year. The Department may calculate the baseline amount over a period of more than one calendar year, provided such determination is consistent with federal requirements.*

*3. The fee amount under subdivision B 1 shall be adjusted each year beginning in 1991 by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers published by the U.S. Department of Labor as of the close of the 12-month period ending on August 31 of each calendar year. The revision of the Consumer Price Index that is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.*

*C. Notwithstanding any provision of this section, no owner shall be required to pay any fee under subsection A with respect to emissions during any year that is treated as an extension year under 42 U.S.C. § 7511(a)(5) of the federal Clean Air Act.*

*D. Payment is due by August 31 of each year, with the first payment due after August 31, 2007. The Department shall issue annual notices of the fees to owners on or before August 1 of each year. Each notice shall include a summary of the data on which the fee is based. The Board may establish additional procedures for the assessment and collection of such fees. The failure to pay within 90 days from the receipt of the notice shall be grounds to institute a collection action against the owner of the stationary source.*

*E. Fees collected pursuant to this section shall not supplant or reduce the general fund appropriation to the Department.*

**CHAPTER 21.2.****THE VIRGINIA NATURAL AND HISTORIC RESOURCES FUND.**

*§ 10.1-2135. Statement of Policy.*

*As stated in Article XI of the Constitution of Virginia, it is the policy of the Commonwealth to*

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59 conserve, develop, and utilize its natural resources, its public lands, and its historic sites and buildings,  
60 and to protect its atmosphere, lands and waters from pollution, impairment, or destruction, for the  
61 benefit, enjoyment, and general welfare of the people of the Commonwealth. The General Assembly  
62 recognizes that this policy cannot be implemented without adequate funding for the necessary and  
63 essential conservation of the Commonwealth's natural and historic resources for the benefit of  
64 Virginians, now and in the future. The Governor and the General Assembly therefore find it is in the  
65 public interest to establish the Virginia Natural and Historic Resources Fund to support the protection,  
66 restoration and preservation of ecological, cultural and historical resources, water quality improvement  
67 and environmental enhancement, and land conservation, including but not limited to open space and  
68 recreational space preservation, and other natural and historic resource protection activities.

69 § 10.1-2136. Virginia Natural and Historic Resources Fund; established.

70 A. There is hereby created in the state treasury a special permanent, nonreverting, interest-bearing  
71 fund to be known as the Virginia Natural and Historic Resources Fund, hereafter referred to as "the  
72 Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of  
73 moneys appropriated to it by the General Assembly and such other sums as may be made available to it  
74 from any source, public or private, all of which shall be credited to the Fund. Any moneys remaining in  
75 the Fund, including interest on private funds deposited in the Fund, at the end of each fiscal year shall  
76 not revert to the general fund but shall remain in the Fund; however, any interest on public funds  
77 deposited in the Fund shall revert to the general fund. The Fund shall be exempt from assessments by  
78 the Department of Accounts for expenses incurred by central service agencies.

79 B. Moneys in the Fund shall be allocated to the Virginia Land Conservation Fund established  
80 pursuant to § 10.1-1020 and the Virginia Water Quality Improvement Fund established pursuant to  
81 § 10.1-2128. The Secretary shall make final determinations regarding the distribution of the moneys to  
82 these funds; however, any moneys deposited to the Fund for a specified use shall be distributed as  
83 designated.

84 § 10.1-2137. Virginia Natural and Historic Resources Fund Commission; membership; terms;  
85 vacancies; chairman and vice chairman; quorum; meetings.

86 A. The Virginia Natural and Historic Resources Fund Commission is established as an advisory body  
87 in the executive branch of state government. The purpose of the Commission is to provide  
88 recommendations to the Secretary of Natural Resources regarding the allocation of moneys in the Fund  
89 to the Water Quality Improvement Fund and the Virginia Land Conservation Fund.

90 B. The Commission shall consist of seven members that include six nonlegislative citizen members  
91 and one ex officio member. Members shall be appointed as follows: two nonlegislative members to be  
92 appointed by the Speaker of the House of Delegates; one nonlegislative citizen member to be appointed  
93 by the Senate Committee on Privileges and Elections; and three nonlegislative citizen members to be  
94 appointed by the Governor, subject to confirmation of the General Assembly; and the Secretary of  
95 Natural Resources or his designee to serve ex officio with voting privileges. Nonlegislative citizen  
96 members of the Commission shall be citizens of the Commonwealth of Virginia.

97 The Secretary of Natural Resources shall serve a term coincident with his term of office. Initial  
98 appointments of nonlegislative citizen members shall be staggered as follows: one member for a term of  
99 three years and one member for a term of two years, appointed by the Speaker of the House of  
100 Delegates; one member for a term of three years, appointed by the Senate Committee on Privileges and  
101 Elections; and one member for a term of three years, one member for a term of two years and one  
102 member for a term of one year, appointed by the Governor. Thereafter, nonlegislative citizen members  
103 shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a  
104 term, shall be for the unexpired terms. All members may be reappointed. However, no nonlegislative  
105 citizen member shall serve more than two consecutive four-year terms. The remainder of any term to  
106 which a member is appointed to fill a vacancy shall not constitute a term in determining the member's  
107 eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.  
108 Nonlegislative citizen members shall have experience or expertise in one or more of the following areas:  
109 natural resources conservation and protection, natural habitat protection, environmental resources  
110 management and protection, forestry management, fish and wildlife management, historic preservation,  
111 or outdoor recreation.

112 C. The Secretary of Natural Resources shall serve as chairman and the Commission shall elect a  
113 vice chairman from among its membership. A majority of the members shall constitute a quorum. The  
114 meetings of the Commission shall be held at the call of the chairman or whenever a majority of the  
115 members so request.

116 D. No members of the Commission shall receive compensation for expenses incurred in the  
117 performance of their duties.

118 E. The Office of the Secretary of Natural Resources shall provide staff support to the Commission.  
119 All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

120 F. The Secretary of Natural Resources shall submit to the Governor and the General Assembly an

121 *annual executive summary of the interim activity and work of the Commission no later than the first day*  
122 *of each regular session of the General Assembly. The executive summary shall be submitted as provided*  
123 *in the procedures of the Division of Legislative Automated Systems for the processing of legislative*  
124 *documents and reports and shall be posted on the General Assembly's website.*  
125 *G. The provisions of this section shall expire on July 1, 2007.*

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