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## SENATE BILL NO. 447

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend and reenact §§ 28.2-1206 and 62.1-44.15:6 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 28.2-803.1 and 28.2-803.2 and by adding in Article 2 of Chapter 8 of Title 28.2 a section numbered 28.2-827, relating to shellfish sanitation; inspections; fees; penalty.*

Patron—Quayle

Referred to Committee on Agriculture, Conservation and Natural Resources

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

**1. That §§ 28.2-1206 and 62.1-44.15:6 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 28.2-803.1 and 28.2-803.2 and by adding in Article 2 of Chapter 8 of Title 28.2 a section numbered 28.2-827 as follows:**

*§ 28.2-803.1. Permit required; application; fees.*

*A. No person shall operate an establishment for the picking, packing, or repacking of crab meat, or the processing, packing, shipping, or reshipping of shellfish without a permit from the State Health Commissioner. This requirement shall not apply to establishments permitted pursuant to § 35.1-14 and processing shellfish or crab meat solely for on-premises consumption.*

*B. The operator of an establishment requiring a permit under subsection A shall submit an application to the Department of Health on a form provided by the State Health Commissioner. The application shall be submitted at least 30 days before any and each establishment is opened. No permit term shall exceed 12 months. A nonrefundable fee of \$600 shall accompany each permit application.*

*C. The Commissioner shall, after an inspection, issue a permit to any establishment in compliance with applicable laws and regulations. Permits shall be nontransferable and issued for a period of time not to exceed one year.*

*D. The Commissioner may deny, revoke, or suspend a permit issued under subsection C if he determines that the establishment is not in compliance with applicable laws and regulations. An applicant whose permit has been denied, revoked, or suspended shall reapply pursuant to subsection B.*

*§ 28.2-803.2. Penalty.*

*Any person convicted of violating any of the provisions of this chapter or the regulations adopted hereunder is guilty of a Class 1 misdemeanor.*

*§ 28.2-827. Shellfish Sanitation Fund established.*

*There is hereby created in the state treasury a special nonreverting fund to be known as the Shellfish Sanitation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected under this chapter pursuant to subsection F of § 28.2-1206 and subsection H of § 62.1-44.15:6 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of shellfish and crab meat inspections and program management by the Department of Health. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the State Health Commissioner.*

*§ 28.2-1206. Permit fees; exemptions.*

*A. The fee paid to the Commission for issuing each permit to recover underwater historic property shall be \$25.*

*B. The fee paid to the Commission for issuing each permit to use state-owned bottomlands shall be \$25, but if the cost of the project is to exceed \$10,000, the fee paid shall be \$100. Riparian owners of (i) commercial facilities engaged in the business of ship construction or repair, (ii) commercial facilities providing services relating to the shipping of domestic or foreign cargo, and (iii) commercial facilities engaged in the business of selling or servicing watercraft shall be exempt from the payment of rents and royalties, except as provided in subsection C.*

*C. When the activity or project for which a permit is requested will involve the removal of bottom material, the application shall indicate this fact. If granted, the permit shall specify a royalty of not less than \$.20, nor more than \$.60, per cubic yard of bottom material removed. In fixing the amount of the royalty, the Commission shall consider, among other factors, the following:*

*1. The primary and secondary purposes for removing the bottom material;*

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2. Whether the material has any commercial value and whether it will be used for any commercial purpose;

3. The use to be made of the removed material and any public benefit or adverse effect upon the public that will result from the removal or disposal of the material;

4. The physical characteristics of the material to be removed; and

5. The expense of removing and disposing of the material.

D. Where it appears that the project or facility for which a permit application is made has been completed or work thereon commenced at the time application is made, the Commission may impose additional assessments not to exceed an amount of three times the normal permit fee and royalties, unless such royalties are prohibited by this chapter.

E. Bottom material removed attendant to maintenance dredging or directional drilling shall be exempt from any royalty. The Virginia Department of Transportation shall be exempt from all fees, rents and royalties otherwise assessable under this section. All counties, cities, and towns of the Commonwealth shall pay the required permit fee but shall be exempt from all other fees, rents and royalties assessable under this section if the permit is issued prior to the commencement of any work to be accomplished under the permit.

F. ~~When the activity or project for which a permit is requested will require a review by the Virginia Department of Health for potential impacts to shellfish growing waters, an additional fee of \$100 shall be collected for permit applications that involve boats, boat slips, or boat moorings; or \$50 for permit applications that do not. All fees collected pursuant to this subsection shall be credited to the Shellfish Sanitation Fund established pursuant to § 28.2-827.~~

G. Unless otherwise provided, fees, rents and royalties collected pursuant to this chapter ~~on and after July 1, 2000,~~ shall be paid into the state treasury to the credit of the Marine Habitat and Waterways Improvement Fund.

§ 62.1-44.15:6. Permit fee regulations.

A. The Board shall promulgate regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, the Department of Game and Inland Fisheries' and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit or certificate, which the Board has authority to issue under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title, from the applicant for such permit or certificate for the purpose of more efficiently and expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. The Board shall have no authority to charge such fees where the authority to issue such permits has been delegated to another agency that imposes permit fees.

B1. Permit fees charged an applicant for a Virginia Pollutant Discharge Elimination System permit or a Virginia Pollution Abatement permit shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. However, notwithstanding any other provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming operation engaged in production for market or for a permit pertaining to maintenance dredging for federal navigation channels or other Corps of Engineers sponsored dredging projects or for the regularly scheduled renewal of an individual permit for an existing facility. Fees shall be charged for a major modification or reissuance of a permit initiated by the permittee that occurs between permit issuance and the stated expiration date. No fees shall be charged for a modification or amendment made at the Board's initiative. In no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit/Certificate Category	Maximum Amount
1. Virginia Pollutant Discharge Elimination System	
Major Industrial	\$24,000
Major Municipal	\$21,300
Minor Industrial with nonstandard limits	\$10,300
Minor Industrial with standard limits	\$ 6,600
Minor Municipal greater than 100,000 gallons per day	\$7,500
Minor Municipal 10,001-100,000 gallons per day	\$6,000
Minor Municipal 1,000-10,000 gallons per day	\$5,400
Minor Municipal less than 1,000 gallons per day	\$2,000

119	General-industrial stormwater	\$ 500
120	management	
121	General-stormwater management-phase I	\$ 500
122	land clearing	
123	General-stormwater management-phase II	\$ 300
124	land clearing	
125	General-other	\$ 600
126	2. Virginia Pollution Abatement	
127	Industrial/Wastewater 10 or more	\$15,000
128	inches per year	
129	Industrial/Wastewater less than 10	\$10,500
130	inches per year	
131	Industrial/Sludge	\$ 7,500
132	Municipal/Wastewater	\$13,500
133	Municipal/Sludge	\$ 7,500
134	General Permit	\$ 600
135	Other	\$ 750

The fee for the major modification of a permit or certificate that occurs between the permit issuance and expiration dates shall be 50 percent of the maximum amount established by this subsection. No fees shall be charged for minor modifications or minor amendments to such permits. For the purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of changes defined by the Board that are made to keep the permit current with routine changes to the facility or its operation that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

B2. Each permitted facility shall pay a permit maintenance fee to the Board by October 1 of each year, not to exceed the following amounts:

146	Type of Permit/Certificate Category	Maximum Amount
147	1. Virginia Pollutant Discharge Elimination System	
148	Major Industrial	\$4,800
149	Major Municipal greater than 10	\$4,750
150	million gallons per day	
151	Major Municipal 2-10 million gallons	\$4,350
152	per day	
153	Major Municipal less than 2 million	\$3,850
154	gallons per day	
155	Minor Industrial with nonstandard	\$2,040
156	limits	
157	Minor Industrial with standard limits	\$1,320
158	Minor Industrial water treatment system	\$1,200
159	Minor Municipal greater than 100,000	\$1,500
160	gallons per day	
161	Minor Municipal 10,001-100,000 gallons	\$1,200
162	per day	
163	Minor Municipal 1,000-10,000 gallons	\$1,080
164	per day	
165	Minor Municipal less than 1,000	\$ 400
166	gallons per day	
167	2. Virginia Pollution Abatement	
168	Industrial/Wastewater 10 or more	\$3,000
169	inches per year	
170	Industrial/Wastewater less than 10	\$2,100
171	inches per year	
172	Industrial/Sludge	\$3,000
173	Municipal/Wastewater	\$2,700
174	Municipal/Sludge	\$1,500

An additional permit maintenance fee of \$1,000 shall be collected from facilities in a toxics

management program and an additional permit maintenance fee shall be collected from facilities that have more than five process wastewater discharge outfalls. Permit maintenance fees shall be collected annually and shall be remitted by October 1 of each year. For a local government or public service authority with permits for multiple facilities in a single jurisdiction, the permit maintenance fees for permits held as of April 1, 2004, shall not exceed \$20,000 per year. No permit maintenance fee shall be assessed for facilities operating under a general permit or for permits pertaining to a farming operation engaged in production for market.

B3. Permit application fees charged for Virginia Water Protection Permits, ground water withdrawal permits, and surface water withdrawal permits shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions and the size of the proposed impact. Only one permit fee shall be assessed for a water protection permit involving elements of more than one category of permit fees under this section. The fee shall be assessed based upon the primary purpose of the proposed activity. In no instance shall the Board charge a fee for a permit pertaining to maintenance dredging for federal navigation channels or other U.S. Army Corps of Engineers-sponsored dredging projects, and in no instance shall the Board exceed the following amounts for the processing of each type of permit/certificate category:

Type of Permit	Maximum Amount
1. Virginia Water Protection	
Individual-wetland impacts	\$2,400 plus \$220 per 1/10 acre of impact over two acres, not to exceed \$60,000
Individual-minimum	
instream flow	\$25,000
Individual-reservoir	\$35,000
Individual-nonmetallic mineral mining	\$7,500
General-less than 1/10 acre impact	\$0
General-1/10 to 1/2 acre impact	\$600
General-greater than 1/2 to one acre impact	\$1,200
General-greater than one acre to two acres of impact	\$120 per 1/10 acre of impact
2. Ground Water Withdrawal	\$6,000
3. Surface Water Withdrawal	\$12,000

No fees shall be charged for minor modifications or minor amendments to such permits. For the purpose of this subdivision, "minor modifications" or "minor amendments" means specific types of changes defined by the Board that are made to keep the permit current with routine changes to the facility or its operation that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

C. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

D. ~~Beginning January 1, 1998, and~~ On January 1 of every even-numbered year thereafter, the Board shall make a report on the implementation of the water permit program to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources and the House Committee on Finance. The report shall include the following: (i) the total costs, both direct and indirect, including the costs of overhead, water quality planning, water quality assessment, operations coordination, and surface water and ground water investigations, (ii) the total fees collected by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal funds received, (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number of permit applications received by category, (vii) the number of permits issued by category, (viii) the progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and indirect costs to neighboring states of administering their water permit programs, including what activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders and applicants.

236 E. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund  
237 appropriation to the Board.

238 F. Permit fee schedules shall apply to permit programs in existence on July 1, 1992, any additional  
239 permits that may be required by the federal government and administered by the Board, or any new  
240 permit required pursuant to any law of the Commonwealth.

241 G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees  
242 for facilities that have established a record of compliance with the terms and requirements of their  
243 permits and shall establish criteria by regulation to provide for reductions in the annual fee amount  
244 assessed for facilities accepted into the Department's programs to recognize excellent environmental  
245 performance.

246 H. *A permit application fee of \$600 shall accompany an application submitted to the Board for*  
247 *activities with potential impacts to shellfish growing waters and requiring a review by the Department of*  
248 *Health. This fee is nonrefundable and shall be deposited into the Shellfish Sanitation Fund established*  
249 *pursuant to § 28.2-827.*

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