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HOUSE BILL NO. 211

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources on January 24, 2018)

(Patron Prior to Substitute—Delegate Wright)

A BILL to amend and reenact §§ 62.1-44.15:6, 62.1-266, and 62.1-267 of the Code of Virginia, relating to ground water withdrawal permit; 15-year term; permit fee.

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:6, 62.1-266, and 62.1-267 of the Code of Virginia are amended and reenacted as follows:

§ 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- or Department of the Navy-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
General-industrial stormwater management	\$500
General-stormwater management-phase I land clearing	\$500
General-stormwater management-phase II land clearing	\$300
General-other	\$600
2. Virginia Pollution Abatement	
Industrial/Wastewater 10 or more inches per year	\$15,000
Industrial/Wastewater less than 10 inches per year	\$10,500
Industrial/Sludge	\$7,500
Municipal/Wastewater	\$13,500
Municipal/Sludge	\$7,500
General Permit	\$600
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.

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

64	Type of Permit/Certificate Category	Maximum Amount
65	1. Virginia Pollutant Discharge Elimination System	
66	Major Industrial	\$4,800
67	Major Municipal greater than 10 million gallons per day	\$4,750
68	Major Municipal 2-10 million gallons per day	\$4,350
69	Major Municipal less than 2 million gallons per day	\$3,850
70	Minor Industrial with nonstandard limits	\$2,040
71	Minor Industrial with standard limits	\$1,320
72	Minor Industrial water treatment system	\$1,200
73	Minor Municipal greater than 100,000 gallons per day	\$1,500
74	Minor Municipal 10,001-100,000 gallons per day	\$1,200
75	Minor Municipal 1,000-10,000 gallons per day	\$1,080
76	Minor Municipal less than 1,000 gallons per day	\$400
77	2. Virginia Pollution Abatement	
78	Industrial/Wastewater 10 or more inches per year	\$3,000
79	Industrial/Wastewater less than 10 inches per year	\$2,100
80	Industrial/Sludge	\$3,000
81	Municipal/Wastewater	\$2,700
82	Municipal/Sludge	\$1,500

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

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

100	Type of Permit	Maximum Amount
101	1. Virginia Water Protection	
102	Individual-wetland impacts	\$2,400 plus \$220 per
103		1/10 acre of impact over
104		two acres, not to exceed
105		\$60,000
106	Individual-minimum instream flow	\$25,000
107	Individual-reservoir	\$35,000
108	Individual-nonmetallic mineral mining	\$7,500
109	General-less than 1/10 acre impact	\$0
110	General-1/10 to 1/2 acre impact	\$600
111	General-greater than 1/2 to one acre impact	\$1,200
112	General-greater than one acre to two acres of impact	\$120 per 1/10 acre of
113		impact
114	2. Ground Water Withdrawal	\$6,000 \$9,000
115	3. Surface Water Withdrawal	\$12,000

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

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

125 D. Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board
 126 shall make a report on the implementation of the water permit program to the Senate Committee on

127 Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House
 128 Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources
 129 and the House Committee on Finance. The report shall include the following: (i) the total costs, both
 130 direct and indirect, including the costs of overhead, water quality planning, water quality assessment,
 131 operations coordination, and surface water and ground water investigations, (ii) the total fees collected
 132 by permit category, (iii) the amount of general funds allocated to the Board, (iv) the amount of federal
 133 funds received, (v) the Board's use of the fees, the general funds, and the federal funds, (vi) the number
 134 of permit applications received by category, (vii) the number of permits issued by category, (viii) the
 135 progress in eliminating permit backlogs, (ix) the timeliness of permit processing, and (x) the direct and
 136 indirect costs to neighboring states of administering their water permit programs, including what
 137 activities each state categorizes as direct and indirect costs, and the fees charged to the permit holders
 138 and applicants.

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

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

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

149 **§ 62.1-266. Ground water withdrawal permits.**

150 A. The Board may issue any ground water withdrawal permit upon terms, conditions, and limitations
 151 necessary for the protection of the public welfare, safety, and health.

152 B. Applications for ground water withdrawal permits shall be in a form prescribed by the Board and
 153 shall contain such information, consistent with this chapter, as the Board deems necessary.

154 C. All ground water withdrawal permits issued by the Board under this chapter shall have a fixed
 155 term not to exceed ~~ten~~ 15 years. The term of a ground water withdrawal permit issued by the Board
 156 shall not be extended by modification beyond the maximum duration, and the permit shall expire at the
 157 end of the term unless a complete application for a new permit has been filed in a timely manner as
 158 required by the regulations of the Board, and the Board is unable, through no fault of the permittee, to
 159 issue a new permit before the expiration date of the previous permit. ~~Any permit to withdraw ground~~
 160 ~~water issued by the Board on or after July 1, 1991, and prior to July 1, 1992, shall expire ten years~~
 161 ~~after the date of its issuance.~~

162 D. Renewed ground water withdrawal permits shall be for a withdrawal amount that includes such
 163 savings as can be demonstrated to have been achieved through water conservation, provided that a
 164 beneficial use of the permitted ground water can be demonstrated for the following permit term.

165 E. Any permit issued by the Board under this chapter may, after notice and opportunity for a
 166 hearing, be amended or revoked on any of the following grounds or for good cause as may be provided
 167 by the regulations of the Board:

168 1. The permittee has violated any regulation or order of the Board pertaining to ground water, any
 169 condition of a ground water withdrawal permit, any provision of this chapter, or any order of a court,
 170 where such violation presents a hazard or potential hazard to human health or the environment or is
 171 representative of a pattern of serious or repeated violations ~~which~~ *that*, in the opinion of the Board,
 172 demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations, or
 173 requirements;

174 2. The permittee has failed to disclose fully all relevant material facts or has misrepresented a
 175 material fact in applying for a permit, or in any other report or document required under this chapter or
 176 under the ground water withdrawal regulations of the Board;

177 3. The activity for which the permit was issued endangers human health or the environment and can
 178 be regulated to acceptable levels by amendment or revocation of the permit; or

179 4. There exists a material change in the basis on which the permit was issued that requires either a
 180 temporary or a permanent reduction or elimination of the withdrawal controlled by the permit necessary
 181 to protect human health or the environment.

182 F. No application for a ground water withdrawal permit shall be considered complete unless the
 183 applicant has provided the Executive Director of the Board with notification from the governing body of
 184 the ~~county, city or town~~ *locality* in which the withdrawal is to occur that the location and operation of
 185 the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22
 186 (§ 15.2-2200 et seq.) of Title 15.2. The provisions of this subsection shall not apply to any applicant
 187 exempt from compliance under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

188 G. A ground water withdrawal permit shall authorize withdrawal of a specific amount of ground
189 water through a single well or system of wells, including a backup well or wells, or such other means as
190 the withdrawer specifies.

191 **§ 62.1-267. Issuance of special exceptions.**

192 A. The Board may issue ~~a special exceptions~~ *exception* to allow the withdrawal of ground water in
193 ~~cases the case of an unusual situations where situation in which~~ requiring the user to obtain a ground
194 water withdrawal permit would be contrary to the intended purpose of the Act.

195 B. In reviewing an application for a special exception, the Board may consider the amount and
196 duration of the proposed withdrawal, the beneficial use intended for the ground water, the return of the
197 ground water to the aquifer, and the effect of the withdrawal on human health and the environment. Any
198 person requesting a special exception shall submit an application to the Board containing such
199 information as the Board shall require by regulation adopted pursuant to this chapter.

200 C. Any special exception issued by the Board shall state the terms pursuant to which the applicant
201 may withdraw ground water, including the amount of ground water that may be withdrawn in any
202 period and the duration of the special exception. No special exception shall be issued for a term
203 exceeding ~~ten~~ 15 years.

204 D. A violation of any term or provision of a special exception shall subject the holder thereof to the
205 same penalties and enforcement procedures as would apply to a violation of a ground water withdrawal
206 permit.

207 E. The Board shall have the power to amend or revoke any special exception after notice and
208 opportunity for hearing on the grounds set forth in subsection D of § 62.1-266 for amendment or
209 revocation of a ground water withdrawal permit.

210 **2. That the State Water Control Board shall, by a regulation effective January 1, 2019, raise from**
211 **\$6,000 to \$9,000 the permit fee applicable to new or reissued individual ground water withdrawal**
212 **permits or certificates. The adoption of such regulation shall be exempt from the requirements of**
213 **Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of**
214 **Virginia).**