

972163158

HOUSE BILL NO. 2245

Offered January 17, 1997

A BILL to amend and reenact §§ 9-6.14:4.1, 62.1-44.15:6, 62.1-44.15:7, and 62.1-44.15:8 of the Code of Virginia, relating to water program permit fees.

Patrons—Connally, Christian, Dillard, Guest, Melvin, Murphy, Parrish, Plum and Puller; Senator: Maxwell

Referred to Committee on Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-6.14:4.1, 62.1-44.15:6, 62.1-44.15:7, and 62.1-44.15:8 of the Code of Virginia are amended and reenacted as follows:

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.

4. The Virginia Housing Development Authority.

5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.

6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.

11. The Council on Information Management.

12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.

13, 14. [Repealed.]

15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, § 3.1-271.1, § 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.

18. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.

21. The Virginia War Memorial Foundation.

INTRODUCED

HB2245

60 22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to
61 the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage
62 pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

63 23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to
64 § 22.1-280.3.

65 24. The Virginia Student Assistance Authorities.

66 25. The Virginia Racing Commission, when acting by and through its duly appointed stewards or in
67 matters related to any specific race meeting.

68 26. The Virginia Small Business Financing Authority.

69 27. The Virginia Economic Development Partnership Authority.

70 28. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations
71 pursuant to clause A (ii) of § 59.1-156.

72 B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

73 1. Money or damage claims against the Commonwealth or agencies thereof.

74 2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

75 3. The location, design, specifications or construction of public buildings or other facilities.

76 4. Grants of state or federal funds or property.

77 5. The chartering of corporations.

78 6. Customary military, naval or police functions.

79 7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of
80 the Commonwealth.

81 8. The conduct of elections or eligibility to vote.

82 9. Inmates of prisons or other such facilities or parolees therefrom.

83 10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as
84 well as the treatment, supervision, or discharge of such persons.

85 11. Traffic signs, markers or control devices.

86 12. Instructions for application or renewal of a license, certificate, or registration required by law.

87 13. Content of, or rules for the conduct of, any examination required by law.

88 14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter
89 14 of Title 2.1.

90 15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent
91 with duly adopted regulations of the State Lottery Board, and provided that such regulations are
92 published and posted.

93 16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish,
94 finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

95 17. Any operating procedures for review of child deaths developed by the State Child Fatality
96 Review Team pursuant to § 32.1-283.1.

97 C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia
98 Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:

99 1. Agency orders or regulations fixing rates or prices.

100 2. Regulations which establish or prescribe agency organization, internal practice or procedures,
101 including delegations of authority.

102 3. Regulations which consist only of changes in style or form or corrections of technical errors. Each
103 promulgating agency shall review all references to sections of the Code of Virginia within their
104 regulations each time a new supplement or replacement volume to the Code of Virginia is published to
105 ensure the accuracy of each section or section subdivision identification listed.

106 4. Regulations which:

107 (a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no
108 agency discretion is involved;

109 (b) Are required by order of any state or federal court of competent jurisdiction where no agency
110 discretion is involved; or

111 (c) Are necessary to meet the requirements of federal law or regulations, provided such regulations
112 do not differ materially from those required by federal law or regulation, and the Registrar has so
113 determined in writing; notice of the proposed adoption of these regulations and the Registrar's above
114 determination shall be published in the Virginia Register not less than thirty days prior to the effective
115 date thereof.

116 5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of
117 this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public
118 health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law
119 or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of
120 the law or the appropriation act or the effective date of the federal regulation, and the regulation is not
121 exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in

writing the nature of the emergency and of the necessity for such action and may adopt such regulations. Pursuant to § 9-6.14:9, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. Such regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be published within sixty days of the effective date of the emergency regulation, and the proposed replacement regulation shall be published within 180 days after the effective date of the emergency regulation.

6. [Repealed.]

7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.

8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.

9. Regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 which are limited to reducing fees charged to regulants and applicants.

10. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to § 45.1-161.82.

11. General permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.), of Title 10.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

12. General permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

13. *The development of guidelines for apportioning the direct and indirect costs of the water permit program and the setting of water permit fee amounts by the State Water Control Board pursuant to § 62.1-44.15:6.*

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection A of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.

2. The award or denial of claims for workers' compensation.

3. The grant or denial of public assistance.

4. Temporary injunctive or summary orders authorized by law.

5. The determination of claims for unemployment compensation or special unemployment.

6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

E. Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter are excluded from the operation of Article 4 (§ 9-6.14:15 et seq.) of this chapter.

183 F. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia
 184 Register Act, is excluded from the operation of subsection C of this section and of Article 2
 185 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for
 186 activity undertaken pursuant to Title 28.2 by the Marine Resources Commission shall be in accordance
 187 with the provisions of this chapter.

188 G. A regulation for which an exemption is claimed under this section and which is placed before a
 189 board or commission for consideration shall be provided at least two days in advance of the board or
 190 commission meeting to members of the public that request a copy of that regulation. A copy of that
 191 regulation shall be made available to the public attending such meeting.

192 H. The Joint Legislative Audit and Review Commission shall conduct a review periodically of
 193 exemptions and exclusions authorized by this section. The purpose of this review shall be to assess
 194 whether there are any exemptions or exclusions which should be discontinued or modified.

195 I. Minor changes to regulations being published in the Virginia Administrative Code under the
 196 Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code
 197 Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

198 § 62.1-44.15:6. Costs of water permit program to be recovered; guidelines developed; permit fees
 199 established.

200 A. *Beginning July 1, 1998, The the Board shall recover at least fifty percent of the annual direct and*
 201 *indirect costs of the water permit program from annual permit fees. Beginning July 1, 2000, at least*
 202 *seventy-five percent of the costs shall be recovered from annual permit fees, and beginning July 1, 2002,*
 203 *100 percent of the costs shall be recovered annually. The method or formula for apportioning the costs*
 204 *among permit applicants and permit holders shall be described in guidelines adopted by the Board no*
 205 *later than December 31, 1997. The Board shall receive public comment for a period of no less than*
 206 *thirty days prior to adoption of the guidelines by the Board. The guidelines shall become effective upon*
 207 *their adoption and shall be published in the Virginia Register. The development of the guidelines and*
 208 *the setting of permit fees shall be exempt from Article 2 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of Title*
 209 *9. The recovery of direct and indirect costs shall apply to any permit or certificate, which the Board has*
 210 *authority to issue under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of*
 211 *this title; from the applicant for such permit or certificate for the purpose of more efficiently and*
 212 *expeditiously processing permits. The fees shall be exempt from statewide indirect costs charged and*
 213 *collected by the Department of Accounts. The Board shall have no authority to charge such fees where*
 214 *the authority to issue such permits has been delegated to another agency which imposes permit fees.*

215 B. *Permit fees charged an applicant shall reflect In adopting guidelines by which the Board shall*
 216 *apportion costs among permit applicants and permit holders through the imposition of permit fees, the*
 217 *Board shall consider among other factors the average time and complexity of processing a permit in*
 218 *each of the various categories of permits and permit actions. However, notwithstanding any other*
 219 *provision of law, in no instance shall the Board charge a fee for a permit pertaining to a farming*
 220 *operation engaged in production for market or for a permit pertaining to maintenance dredging for*
 221 *federal navigation channels or other Corps of Engineers sponsored dredging projects; and in no instance*
 222 *shall the Board exceed the following amounts for the processing of each type of permit/certificate*
 223 *category:*

224 Type of Permit/Certificate Category Maximum Amount

225 1. Virginia Pollutant Discharge Elimination System

226 Major \$ 8,000

227 Minor \$ 3,500

228 General \$ 400

229 2. Virginia Pollution Abatement

230 Industrial/Wastewater \$ 5,000

231 Industrial/Sludge \$ 2,500

232 Municipal/Wastewater \$ 5,000

233 Municipal/Sludge \$ 2,500

234 Other \$ 250

235 3. 401 Certification/Virginia Water Protection

236 Individual \$ 3,000

237 General \$ 400

238 Waiver \$ 400

239 4. Ground Water Withdrawal \$ 2,000

240 5. Surface Water Withdrawal \$ 4,000

241 When modifications in these permits or certificates have been initiated by the Board, the fee for the
 242 modified permit or certificate shall not exceed seventy-five percent of the maximum amount established
 243 by this subsection. Payments for the costs of processing applications by the Department of Game and
 244 Inland Fisheries and the Department of Conservation and Recreation shall be limited to the lesser of

twenty-five percent of the fees prescribed by regulation or \$100 per permit or certificate and shall further be limited to those permits or certificates these agencies are required to review by the Code of Virginia.

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. *The Board shall establish a fee schedule, in accordance with the guidelines, to recover the appropriate percentage of the water permit program's costs, as specified in subsection A. The total costs shall be based on the most recent report submitted pursuant to subsection D. Fees for individual permits may be adjusted to reflect compliance history, implementation of pollution prevention plans, or use of innovative technology. The fee schedule shall become effective July 1, 1998, and may be subject to revision on July 1 of every even-numbered year thereafter, in accordance with the report submitted under subsection D. For those applying for a permit, the annual permit fee shall be paid at the time the permit application is submitted. For holders of permits, the permit fee shall be paid annually during the same yearly quarter in which the permit was originally issued.*

D. ~~On January 1, 1993~~ Beginning January 1, 1998, and January 1 of every even-numbered year thereafter, the Board shall make an evaluation of a report on the implementation of the water permit fee program and provide this evaluation in writing to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Conservation and Natural Resources and the House Committee on Finance. ~~This evaluation~~ *The report shall include a report on 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, and 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, and (ix) the timeliness of permit processing.*

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

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

G. The Board is authorized to promulgate regulations establishing a schedule of reduced permit fees for facilities which have established a record of compliance with the terms and requirements of their permits.

§ 62.1-44.15:7. Permit Program Fund established; use of moneys.

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the State Water Control Board Permit Program Fund, hereafter referred to as the Fund. Notwithstanding the provisions of § 2.1-180, all moneys collected pursuant to § 62.1-44.15:6 shall be paid into the state treasury to the credit of the Fund.

B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

C. The Board is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes of recovering portions of ~~the the direct and indirect~~ costs of processing applications under this chapter and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of this title *the water permit program pursuant to § 62.1-44.15:6* under the direction of the Executive Director.

D. An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller and furnished upon request to the Governor or the General Assembly.

§ 62.1-44.15:8. Conformance with federal requirements.

Notwithstanding the provisions of this article, any fee system developed by the Board may be modified by regulation promulgated by the Board, as may be necessary to conform with the requirements of the federal Clean Water Act and any regulations promulgated thereunder. Any modification imposed under this section shall be submitted to the members of the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Conservation and Natural Resources, and Finance.

2. That the existing State Water Control Board 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 State Water Control Board has authority to issue under

306 Chapters 3.1 (§ 62.1-44.2 et seq.) 24 (§ 62.1-242 et seq.), and 25 (§ 62.1-254 et seq.) shall remain in
307 full force and effect until July 1, 1998, at which time the water program permit fees authorized by
308 the provisions of this act shall become effective.