

VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

CHAPTER 263

An Act to amend and reenact § 10.1-1307 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1307.04, relating to the State Air Pollution Control Board; low-emissions and zero-emissions vehicle standards.

[H 1965]

Approved March 18, 2021

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1307 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-1307.04 as follows:

§ 10.1-1307. Further powers and duties of Board.

A. The Board shall have the power to control and regulate its internal affairs; initiate and supervise research programs to determine the causes, effects, and hazards of air pollution; initiate and supervise statewide programs of air pollution control education; cooperate with and receive money from the federal government or any county or municipal government, and receive money from any other source, whether public or private; develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth; and advise, consult, and cooperate with agencies of the United States and all agencies of the Commonwealth, political subdivisions, private industries, and any other affected groups in furtherance of the purposes of this chapter.

B. The Board may adopt by regulation emissions standards controlling the release into the atmosphere of air pollutants from motor vehicles, only as provided in § 10.1-1307.04 and Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2.

C. After any regulation has been adopted by the Board pursuant to § 10.1-1308, it may in its discretion grant local variances therefrom, if it finds after an investigation and hearing that local conditions warrant. If local variances are permitted, the Board shall issue an order to this effect. Such order shall be subject to revocation or amendment at any time if the Board after a hearing determines that the amendment or revocation is warranted. Variances and amendments to variances shall be adopted only after a public hearing has been conducted pursuant to the public advertisement of the subject, date, time, and place of the hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance.

D. After the Board has adopted the regulations provided for in § 10.1-1308, it shall have the power to: (i) initiate and receive complaints as to air pollution; (ii) hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce its regulations pursuant to § 10.1-1309; and (iii) institute legal proceedings, including suits for injunctions for the enforcement of its orders, regulations, and the abatement and control of air pollution and for the enforcement of penalties.

E. The Board in making regulations and in approving variances, control programs, or permits, and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located; and
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

F. The Board may designate one of its members, the Director, or a staff assistant to conduct the hearings provided for in this chapter. A record of the hearing shall be made and furnished to the Board for its use in arriving at its decision.

G. The Board shall not:

1. Adopt any regulation limiting emissions from wood heaters; or
2. Enforce against a manufacturer, distributor, or consumer any federal regulation limiting emissions from wood heaters adopted after May 1, 2014.

H. The Board shall submit an annual report to the Governor and General Assembly on or before October 1 of each year on matters relating to the Commonwealth's air pollution control policies and on the status of the Commonwealth's air quality.

§ 10.1-1307.04. Low-emissions and zero-emissions vehicle standards.

A. As used in this section:

"LEV" means low-emission vehicle.

"ZEV" means zero-emission vehicle.

B. The Board may adopt by regulation and enforce any model year standards relating to the control of emissions from new motor vehicles or new motor vehicle engines, including LEV and ZEV standards pursuant to § 177 of the federal Clean Air Act (42 U.S.C. § 7507). The Board shall promulgate final regulations for an Advanced Clean Cars Program that includes (i) an LEV program for criteria pollutants and greenhouse gas emissions and (ii) a ZEV program only for motor vehicles with a gross vehicle weight of 14,000 pounds or less. Such programs shall be applicable to motor vehicles beginning with the 2025 model year, or to the first model year for which adoption of such standards is practicable. The Board shall periodically amend any regulations adopted pursuant to this section to ensure continued consistency of such standards with the Clean Air Act.

2. That the regulations required to be adopted by the State Air Pollution Control Board pursuant to § 10.1-1307.04 of the Code of Virginia, as created by this act, shall be exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Such regulations shall become effective upon filing with the Virginia Registrar of Regulations.

3. That the regulations required to be adopted by the State Air Pollution Control Board pursuant to § 10.1-1307.04 of the Code of Virginia, as created by this act, shall not become effective prior to January 1, 2024.

4. That the State Corporation Commission may exclude energy jurisdictional retail sales related to zero-emission vehicles and hybrid electric vehicles from energy jurisdictional retail sales calculated pursuant to § 56-596.2 of the Code of Virginia.

5. That the regulations required to be adopted by the State Air Pollution Control Board (Board) pursuant to § 10.1-1307.04 of the Code of Virginia, as created by this act, shall allow any motor vehicle manufacturer to establish a Virginia-specific zero-emission vehicle (ZEV) credit account in the ZEV Credit System and to make a one-time deposit into its account a number of proportional credits equal to its 2025 model year starting California credit balance multiplied by the ratio of the average number of passenger cars and light-duty trucks that a manufacturer produced and delivered for sale in Virginia to the average number of passenger cars and light-duty trucks the manufacturer produced and delivered for sale in California during the time period selected by the manufacturer for calculation of its ZEV requirement for the first effective model year. The deposit shall be made only after all credit obligations for model year 2024 and earlier have been satisfied. While manufacturers may trade or sell these proportional credits to any other manufacturer, these credits may be used to meet up to 18 percent of its ZEV program credit requirements in any model year, unless and until the required regulations are superseded by regulations updating the Advanced Clean Car Program. The Board shall not award or provide any vehicle manufacturer with any other form of ZEV program credits or credit balance prior to the effective date or at the beginning of the compliance period of the regulations required by § 10.1-1307.04 of the Code of Virginia, as created by this act. As part of any update to the required regulations to ensure compliance of the ZEV program with the federal Clean Air Act (42 U.S.C. § 7401 et. seq.), the Board shall adjust, if necessary, restrictions on the use of the proportional credits remaining in manufacturers' Virginia accounts in order to ensure that the percentage of ZEVs required to be delivered for sale under Virginia's ZEV program is approximately equivalent to, but does not exceed, the percentage required under California's ZEV program, taking into account only existing ZEV credit banks, any changes in restrictions on their use, and the effects of new regulatory requirements on the amount and timing of ZEVs required to be delivered for sale.