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SENATE BILL NO. 785

Offered January 11, 2023

Prefiled October 11, 2022

A BILL to amend and reenact § 10.1-1307 of the Code of Virginia and to repeal § 10.1-1307.05 of the Code of Virginia and the second through fifth enactments of Chapter 263 of the Acts of Assembly of 2021, Special Session I, relating to the State Air Pollution Control Board; motor vehicle emissions standards.

Patron—McDougle

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That § 10.1-1307 of the Code of Virginia is amended and reenacted as follows:****§ 10.1-1307. Further powers and duties of Board and Department.**

A. The Board shall have the power to control and regulate its internal affairs. The Department shall have the power to 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 ~~§ 10.1-1307.05~~ 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, the Department may grant local variances therefrom, if it finds after an investigation and hearing that local conditions warrant; except that no local variances shall be granted from regulations adopted by the Board pursuant to § 10.1-1308 related to the requirements of subsection E of § 10.1-1308 or Article 4 (§ 10.1-1329 et seq.). If local variances are permitted, the Department shall issue an order to this effect. Such order shall be subject to revocation or amendment at any time if the Department, 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, the Department 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 the Board's regulations pursuant to § 10.1-1309; and (iii) institute legal proceedings, including suits for injunctions for the enforcement of orders, regulations, and the abatement and control of air pollution and for the enforcement of penalties.

E. The Board in making regulations; the Department 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, except that consideration of this factor shall be satisfied if the local governing body of a locality in which a facility or activity is proposed has resolved that the location and operation of the proposed facility or activity is suitable 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 Department shall conduct the hearings provided for in this chapter.

G. The Board shall not:

1. Adopt any regulation limiting emissions from wood heaters; or

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

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

64 I. In granting a permit pursuant to this section, the Department shall provide in writing a clear and
65 concise statement of the legal basis, scientific rationale, and justification for the decision reached. When
66 the decision of the Department is to deny a permit, pursuant to this section, the Department shall, in
67 consultation with legal counsel, provide a clear and concise statement explaining the reason for the
68 denial, the scientific justification for the same, and how the Department's decision is in compliance with
69 applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by
70 certified mail to the permittee or applicant.

71 **2. That § 10.1-1307.05 of the Code of Virginia is repealed.**

72 **3. That the second, third, fourth, and fifth enactments of Chapter 263 of the Acts of Assembly of**
73 **2021, Special Session I, are repealed.**

74 **4. That, notwithstanding any other provision of law, (i) the State Air Pollution Control Board shall**
75 **not adopt or enforce any model year standards related to control of emissions from new motor**
76 **vehicles or new motor vehicle engines, including low-emission vehicle and zero-emission vehicle**
77 **standards, pursuant to § 177 of the federal Clean Air Act (42 U.S.C. § 7507), and (ii) the**
78 **Commonwealth shall not require any new motor vehicle or new motor vehicle engine to be**
79 **certified as compliant with model year standards related to the control of emissions adopted by**
80 **California for which a waiver has been granted pursuant to § 209 of the federal Clean Air Act (42**
81 **U.S.C. § 7543).**