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SENATE BILL NO. 398

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact §§ 10.1-1329 and 10.1-1330 of the Code of Virginia, relating to the Regional Greenhouse Gas Initiative; preexisting contracts.*

Patron—McDougle

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. **That §§ 10.1-1329 and 10.1-1330 of the Code of Virginia are amended and reenacted as follows:**
§ 10.1-1329. Definitions.

As used in this article, unless the context requires a different meaning:

"Allowance" means an authorization to emit a fixed amount of carbon dioxide.

"Allowance auction" means an auction in which the Department or its agent offers allowances for sale.

"DHCD" means the Department of Housing and Community Development.

"DOE" means the Department of Energy.

"Energy efficiency program" has the same meaning as provided in § 56-576.

"Fund" means the Virginia Community Flood Preparedness Fund created pursuant to § 10.1-603.25.

"Housing development" means the same as that term is defined in § 36-141.

"*Preexisting contractual arrangement*" means a power purchase agreement or similar commercial arrangement, including options contracts, entered into on or before May 16, 2017, and continuing in effect on July 1, 2020, related to a power generation facility subject to the RGGI.

"Regional Greenhouse Gas Initiative" or "RGGI" means the program to implement the memorandum of understanding between signatory states dated December 20, 2005, and as may be amended, and the corresponding model rule that established a regional carbon dioxide electric power sector cap and trade program.

"Secretary" means the Secretary of Natural and Historic Resources.

§ 10.1-1330. Clean Energy and Community Flood Preparedness.

A. The provisions of this article shall be incorporated by the Department, without further action by the Board, into the final regulation adopted by the Board on April 19, 2019, and published in the Virginia Register on May 27, 2019. Such incorporation by the Department shall be exempt from the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq.).

B. The Director is hereby authorized to establish, implement, and manage an auction program to sell allowances into a market-based trading program consistent with the RGGI program and this article. The Director shall seek to sell 100 percent of all allowances issued each year through the allowance auction, unless the Department finds that doing so will have a negative impact on the value of allowances and result in a net loss of consumer benefit or is otherwise inconsistent with the RGGI program.

C. To the extent permitted by Article X, Section 7 of the Constitution of Virginia, the state treasury shall (i) hold the proceeds recovered from the allowance auction in an interest-bearing account with all interest directed to the account to carry out the purposes of this article and (ii) use the proceeds without further appropriation for the following purposes:

1. Forty-five percent of the revenue shall be credited to the account established pursuant to the Fund for the purpose of assisting localities and their residents affected by recurrent flooding, sea level rise, and flooding from severe weather events.

2. Fifty percent of the revenue shall be credited to an account administered by DHCD to support low-income energy efficiency programs, including programs for eligible housing developments. DHCD shall review and approve funding proposals for such energy efficiency programs, and DOE shall provide technical assistance upon request. Any sums remaining within the account administered by DHCD, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in such account to support low-income energy efficiency programs.

3. Three percent of the revenue shall be used to (i) cover reasonable administrative expenses of the Department in the administration of the revenue allocation, carbon dioxide emissions cap and trade program, and auction and (ii) carry out statewide climate change planning and mitigation activities.

4. Two percent of the revenue shall be used by DHCD, in partnership with DOE, to administer and implement low-income energy efficiency programs pursuant to subdivision 2.

D. The Department, the Department of Conservation and Recreation, DHCD, and DOE shall prepare

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59 a joint annual written report describing the Commonwealth's participation in RGGI, the annual reduction
60 in greenhouse gas emissions, the revenues collected and deposited in the interest-bearing account
61 maintained by the Department pursuant to this article, and a description of each way in which money
62 was expended during the fiscal year. The report shall be submitted to the Governor and General
63 Assembly by January 1, 2022, and annually thereafter.

64 *E. 1. The Director shall establish and administer a preexisting contractual arrangement reserve*
65 *account. At least once per year, an entity may obtain allowances at a cost equal to \$2 per allowance*
66 *from the reserve account to satisfy the total allowance obligation attributable to the preexisting*
67 *contractual arrangement. Allowances placed in the reserve account shall not exceed (i) two million*
68 *allowances per year in 2021 and 2022; (ii) 1.25 million allowances per year in 2023 and 2024; (iii)*
69 *600,000 allowances per year in 2025; and (iv) zero allowances for each subsequent year. If the number*
70 *of available allowances does not satisfy the requirements of each eligible entity, the Director shall make*
71 *allowances available from the reserve account to eligible entities on a pro rata basis according to the*
72 *allowances attributable to each entity's preexisting contractual arrangements that have not yet been*
73 *obtained from the reserve account. Reserve account allowances for 2021 may be placed in the reserve*
74 *account in 2022, and obtained by an entity in 2022 for its 2021 allowance obligation attributable to the*
75 *preexisting contractual arrangement.*

76 *2. If an entity with a preexisting contractual arrangement or an affiliate of such entity retires a*
77 *power generation facility subject to RGGI prior to December 31, 2025, by delisting such resource with*
78 *PJM Interconnection, the reserve account allowance caps set forth in subdivision 1 shall be*
79 *increased by the number of tons of carbon dioxide equivalent emitted by the retired facility in the*
80 *calendar year immediately prior to its retirement, up to an amount not to exceed 250,000 allowances*
81 *per year. Such entity with a preexisting contractual arrangement that has or is an affiliate of a retired*
82 *facility shall receive allowances from the reserve account equal to the tons of carbon dioxide equivalent*
83 *emitted by the retired facility in its last full calendar year of operation.*

84 *3. An entity with a preexisting contractual arrangement may purchase allowances from the reserve*
85 *account if:*

86 *a. A preexisting contractual arrangement exists and the entity is unable to pass through or recover*
87 *its RGGI costs from the counterparty or through other mechanisms;*

88 *b. The number of allowances purchased from the reserve account by the entity in a given year does*
89 *not exceed the equivalent tons of carbon dioxide that the entity emitted in the prior calendar year;*

90 *c. Such entity exercises any option that exists in the preexisting contractual arrangement to*
91 *renegotiate the contract, to include the cost of purchasing carbon dioxide allowances, at the first*
92 *opportunity to exercise such option under the provisions of the preexisting contractual arrangement; and*

93 *d. Each calendar year, the carbon dioxide authorized account representative for the compliance*
94 *account makes all requests for purchase of allowances from the reserve account to the Department, and*
95 *such request includes (i) a copy of the preexisting contractual arrangement if it has not previously been*
96 *provided to the Department or, if it has, a letter certifying that the contract has not changed since the*
97 *time it was provided and (ii) a letter certifying that the entity is unable to recover the cost of*
98 *allowances through electricity pricing or through other mechanisms.*

99 *4. Any allowances purchased from the reserve account in a year that are in excess of the entity's*
100 *equivalent tons of carbon dioxide emissions in that year shall be forfeited by the entity and returned to*
101 *the Department, and the entity shall be reimbursed by the Department for its cost to purchase such*
102 *allowances.*

103 *5. The Director shall require that an entity purchasing allowances from the reserve account certify at*
104 *least once annually that it has made purchases of equipment or services in Virginia during the year or*
105 *has a plan to make purchases of equipment or services in Virginia, including by affiliate entities, equal*
106 *to the value of the discount price of allowances purchased from the reserve account as determined by*
107 *the most recent auction price.*