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SENATE BILL NO. 651

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 6, 2006)

(Patrons Prior to Substitute—Senator Puckett and Senator Ticer [SB 242])

A BILL to amend the Code of Virginia by adding in Chapter 13 of Title 10.1 an article numbered 3 consisting of sections numbered 10.1-1327 and 10.1-1328, relating to the control of air emissions.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 13 of Title 10.1 an article numbered 3, consisting of sections numbered 10.1-1327 and 10.1-1328, as follows:

Article 3.

Air Emissions Control.

§ 10.1-1327. Definitions.

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

"Electric generating unit" means a unit that combusts fossil fuel and has the capacity to generate 25 or more megawatts of electricity that is used for sale.

"Mercury" means mercury and mercury compounds in either a gaseous or particulate form.

"Ozone season" means the period May 1 through September 30 of a year.

§ 10.1-1328. Emissions rates and limitations.

A. To ensure that the regulated units within the Commonwealth meet the emissions budgets established by the federal Environmental Protection Agency (EPA) in its Clean Air Interstate Rule, the Board shall promulgate regulations that provide:

1. Beginning on January 1, 2009, all electric generating units within the Commonwealth shall collectively be allocated allowances of 36,074 tons of nitrogen oxide (NOx) annually, and 15,994 tons of NOx during an ozone season;

2. Beginning on January 1, 2010, all electric generating units within the Commonwealth shall collectively be allocated allowances of 63,478 tons of sulfur dioxide (SO₂) annually;

3. Beginning on January 1, 2015, all electric generating units within the Commonwealth shall collectively be allocated allowances of 44,435 tons of SO₂ annually, 30,062 tons of NOx annually, and 13,328 tons of NOx during an ozone season;

4. The rules shall include a 5% set aside of NOx allowances during the first five years of the program and 2% thereafter for new sources, including renewables and energy efficiency projects; and

5. Regulated facilities shall be entitled to participate in the EPA administered cap and trade system to the fullest extent permitted by federal law except that the Board may prohibit electric generating facilities located within a nonattainment area in the Commonwealth from meeting their NOx and SO₂ compliance obligations through the purchase of allowances from in-state or out-of-state facilities.

B. To ensure compliance with the EPA requirements regarding control of mercury emissions from electric generating units, the Board shall adopt and submit to the EPA the model Clean Air Mercury Rule (CAMR) promulgated by the EPA, including full participation by Virginia electric generating units in the EPA's national mercury trading program.

C. To further protect Virginia's environment regarding control of mercury emissions from electric generating units, the Board shall adopt a separate state specific rule that shall not be submitted to the EPA. This state specific rule shall apply to the owner of one or more electric generating units that are located within the Commonwealth and whose combined emissions of mercury from such units exceeded 900 pounds in 1999. This state-specific rule shall allocate a separate set of state-only mercury allowances and shall differ from the model CAMR only in the following respects:

1. The owner subject to the requirements of this subsection shall not be permitted to purchase allowances to demonstrate compliance with the CAMR. However, such owner shall be permitted to demonstrate compliance by showing that total mercury emissions from all of its electric generating units located in the Commonwealth do not exceed the total mercury allowances allocated to those units and held in their accounts.

2. The owner subject to the requirements of this subsection shall be required to meet the Phase 2 emission limits set forth in the Clean Air Mercury Rule by January 1, 2015.

3. Nothing in the state-specific mercury rule shall be construed to prohibit the banking or selling of allowances under the CAMR, and compliance with the CAMR and the state-specific mercury rule shall be determined separately and in accordance with the terms of each rule.

D. The owner of one or more electric generating units that are located in the Commonwealth whose combined emissions of mercury from those units in 1999 were less than 900 pounds and whose combined capacity in the Commonwealth is greater than or equal to 600 MW, shall be permitted to

60 *satisfy its compliance obligations under the CAMR through the surrender of allowances that meet the*
61 *following requirements: the allowances to be used are allocated to a facility under the control of the*
62 *same owner or operator, the allowances used are generated and capable of being lawfully traded under*
63 *the CAMR, and the allowances are generated at a facility located a straight line distance from the*
64 *border of the Commonwealth of less than or equal to 200 km.*

65 *E. The Board shall adopt regulations that meet, but do not exceed, the requirements and*
66 *implementation timetables for (i) any coke oven batteries for which the EPA has promulgated standards*
67 *under Section 112(d) of the Clean Air Act, and (ii) facilities subject to review under Section 112(k) of*
68 *the Clean Air Act and that receive scrap metal from persons subject to § 46.2-635 of the Code of*
69 *Virginia.*