

11100041D

HOUSE BILL NO. 1398

Offered January 12, 2011

Prefiled July 21, 2010

A BILL to amend and reenact § 10.1-1308 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1306.1, relating to regulation of carbon dioxide emissions.

Patrons—Marshall, R.G., Cole and Poindexter

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1308 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-1306.1 as follows:

§ 10.1-1306.1. Authority of Governor and Attorney General; carbon dioxide emissions; cap and trade.

A. The Governor, in consultation with the Attorney General, shall examine those provisions of the federal Clean Air Act that provide authorization for (i) a "cap and trade" program and (ii) the control of carbon dioxide emissions, to determine whether the United States Congress has the authority to impose such mandates upon the states and the factual basis upon which the United States Environmental Protection Agency (EPA) has proposed the implementation of such provisions. The Governor shall report his finding to the General Assembly not later than six months after such federal legislation has been enacted. The Attorney General may initiate a legal action against the EPA if he finds that the federally mandated standards established for carbon dioxide and "cap and trade" are based on an EPA finding that is not scientifically demonstrated.

B. The Governor through an executive order or the General Assembly shall not enforce any climate change international agreement, including the Copenhagen Accord, until such agreements have been approved as part of an international treaty that has been approved by the United States Senate.

C. For the purposes of this chapter, any one or combination of the natural elements included in the periodic table of chemical elements shall not per se be considered an air pollutant, except when the element exceeds the threshold amount that has been demonstrated to adversely affect human health and the environment.

§ 10.1-1308. Regulations.

A. The Board, after having studied air pollution in the various areas of the Commonwealth, its causes, prevention, control and abatement, shall have the power to promulgate regulations, including emergency regulations, abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable. No such regulation, shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning. The regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations. Any regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 2.2-4100 et seq.).

B. Any regulation that prohibits the selling of any consumer product shall not restrict the continued sale of the product by retailers of any existing inventories in stock at the time the regulation is promulgated.

C. Any regulation requiring the use of stage 1 vapor recovery equipment at gasoline dispensing facilities may be applicable only in areas that have been designated at any time by the U.S. Environmental Protection Agency as nonattainment for the pollutant ozone. For purposes of this section, gasoline dispensing facility means any site where gasoline is dispensed to motor vehicle tanks from storage tanks.

D. The Board shall not adopt any regulation that prohibits, limits, or controls the emission of carbon dioxide in a manner more restrictive than applicable federal requirements.

INTRODUCED

HB1398