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HOUSE BILL NO. 2735

Offered January 16, 2019

A BILL to amend and reenact § 10.1-603.25 of the Code of Virginia, relating to the Virginia Coastal Protection Fund; establishment of a carbon dioxide cap and trade program; authorization to establish an auction allowance program consistent with the Regional Greenhouse Gas Initiative Memorandum of Understanding; deposit and distribution of proceeds of allowance auctions; development of utility-owned and utility-operated generating facilities; assessment of non-passable surcharges; Virginia Coastal Protection Act.

Patrons—Toscano, Heretick, Kory, Levine, Lopez and Mullin

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-603.25 of the Code of Virginia is amended and reenacted as follows:

§ 10.1-603.25. Virginia Coastal Protection Fund.

There shall be set apart a permanent and perpetual fund, to be known as the A. The Virginia Shoreline Resiliency Fund, ~~consisting~~ is continued as the Virginia Coastal Protection Fund (the Fund), which is established and set apart as a permanent and nonreverting fund. The Fund shall consist of not more than 77 percent of the revenue generated by the sale of carbon dioxide emissions allowances through any auction program administered by the Commonwealth, as determined by the Department of Environmental Quality with the approval of the Secretary of Natural Resources; such sums that may be appropriated to the Fund by the General Assembly; all receipts by the Fund from repayment of loans made by it to local governments; all income from the investment of moneys held in the Fund; and any other sums designated for deposit to the Fund from any source, public or private, including any federal grants and awards or other forms of assistance received by the Commonwealth that are eligible for deposit in the Fund under federal law. Any moneys remaining in the fund at the end of the biennium, including any appropriated funds and all principal, accrued interest, and payments, shall not revert to the general fund.

B. The Fund shall be administered by the Department of Conservation and Recreation as prescribed in this article. The Department of Conservation and Recreation, in consultation with the Secretary of Natural Resources and the Special Assistant to the Governor for Coastal Adaptation and Protection, shall establish guidelines regarding the distribution of loans and grants from the Fund and prioritization of such loans and grants. The Authority shall manage the Fund and shall establish interest rates and repayment terms of such loans as provided in this article. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the management of the Fund.

C. Localities shall use moneys from the Fund primarily for the purpose of ~~creating a low-interest loan program to help residents and businesses implementing hazard mitigation projects in areas that are~~ subject to recurrent flooding as confirmed by a locality-certified floodplain manager. Moneys in the Fund may be used to mitigate future flood damage.

D. Any locality is authorized to secure a loan made through such a low-interest loan program by placing a lien up to the value of the loan against any property that benefits from the loan. Such a lien shall be subordinate to each prior lien on such property, except prior liens for which the prior lienholder executes a written subordination agreement, in a form and substance acceptable to the prior lienholder in its sole and exclusive discretion, that is recorded in the land records where the property is located.

2. § 1. Definitions.

As used in this enactment:

"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.

"Authority" means the Virginia Resources Authority.

"Board" means the State Air Pollution Control Board.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"DMME" means the Department of Mines, Minerals and Energy.

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

"Fund" means the Virginia Coastal Protection Fund created pursuant to § 10.1-603.25 of the Code of Virginia.

"Regional Greenhouse Gas Initiative" or "RGGI" means the program to implement the memorandum

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59 of understanding between signatory states dated December 20, 2005, and as may be amended, and the
60 corresponding model rule that established a regional carbon dioxide pollution reduction program for the
61 electric power sector.

62 "Secretary" means the Secretary of Natural Resources.

63 § 2. The Board shall adopt regulations to limit and reduce the total carbon dioxide emissions
64 released by electric generation facilities. The regulations shall comply with the RGGI model rule and
65 shall specify that the Department shall seek to sell 100 percent of all allowances issued each year
66 through the allowance auction, unless the Department finds that doing so will have a negative impact
67 on the value of allowances and result in a net loss of consumer benefit or is otherwise inconsistent with
68 the RGGI program. If as of the effective date of this act the Board has adopted regulations to reduce
69 carbon dioxide emissions from electric generation facilities, the provisions of this section shall be
70 incorporated into such regulations by the Department without further action by the Board.

71 § 3. The Director is hereby authorized to establish, implement, and manage an auction program to
72 sell allowances into a market-based program consistent with the RGGI program and this act. To the
73 extent permitted by Article X, Section 7 of the Constitution of Virginia, the Department shall (i) hold the
74 proceeds recovered from the auction allowance in an interest-bearing account with all interest directed
75 to the account to carry out the purposes of this act and (ii) use the proceeds without further
76 appropriation for the following purposes only in a proportion to be determined by the Department with
77 the approval of the Secretary:

78 1. Not more than 77 percent of the revenue shall be credited to the Fund for the purpose of assisting
79 localities in implementing hazard mitigation projects in areas that are subject to recurrent flooding;

80 2. Not more than 10 percent of the revenue shall be credited to an account established through the
81 VirginiaSAVES program administered by DMME to support energy efficiency programs, of which
82 amount at least 20 percent shall be directed to low-income energy efficiency programs. DMME shall
83 review and approve all funding proposals for energy efficiency programs;

84 3. Not more than 10 percent of the revenue shall be credited to an account to provide economic
85 development, education, and workforce training programs for families and businesses in Southwest
86 Virginia for the purpose of revitalizing communities negatively affected by the decline of fossil fuel
87 production, the guidelines of which shall be determined by DMME; and

88 4. Not more than three percent of the revenue shall be used to cover reasonable administrative
89 expenses of the Department and DMME in the administration of this act.

90 § 4. The development of new utility-owned and utility-operated generating facilities utilizing energy
91 derived from sunlight, or from onshore or offshore wind, to achieve the reduction in carbon dioxide
92 emissions prescribed under the authority of this act is in the public interest. A Phase I or Phase II
93 Utility, as defined in § 56-585.1:3 of the Code of Virginia, shall achieve a minimum of 50 percent of the
94 reduction in carbon dioxide emissions prescribed under the authority of this act through the
95 development of such utility-owned and utility-operated generating facilities utilizing energy derived from
96 sunlight, or from onshore or offshore wind.

97 § 5. For any retail customer who purchases electric energy from a supplier other than the incumbent
98 electric utility serving the exclusive service territory in which such retail customer is located pursuant to
99 § 56-577 of the Code of Virginia, such retail customer shall pay a non-bypassable surcharge equal to
100 the price established under the allowance auction to the incumbent electric utility for any purchase of
101 electric energy that is not from a facility utilizing renewable energy, as defined in § 56-576 of the Code
102 of Virginia, or a facility utilizing nuclear power.

103 § 6. Beginning in 2020, the Department shall prepare an annual written report describing the
104 Commonwealth's participation in RGGI, the revenues collected and deposited in the interest-bearing
105 account described in clause (i) of § 3, and how such funds were expended during the fiscal year. The
106 report shall be submitted to the General Assembly by December 31 each year.

107 3. That the incorporation of the provisions of § 2 of this act by the Department of Environmental
108 Quality as required by § 2 of the second enactment of this act is exempt from the provisions of the
109 Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Such
110 incorporation required by this act shall (a) be approved by the Director of the Department of
111 Environmental Quality not later than July 31, 2019, and (b) become effective upon approval by
112 the Director and being filed with the Registrar of Regulations as provided in the Virginia Register
113 Act (§ 2.2-4100 et seq. of the Code of Virginia).