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HOUSE BILL NO. 981**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 18, 2020)

(Patron Prior to Substitute—Delegate Herring)

A BILL to amend and reenact §§ 10.1-603.24 and 10.1-603.25 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 13 of Title 10.1 an article numbered 4, consisting of sections numbered 10.1-1329, 10.1-1330, and 10.1-1331, relating to Clean Energy and Community Flood Preparedness Act; fund.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-603.24 and 10.1-603.25 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 13 of Title 10.1 an article numbered 4, consisting of sections numbered 10.1-1329, 10.1-1330, and 10.1-1331, as follows:

Article 1.3.

Virginia Shoreline Resiliency Community Flood Preparedness Fund.

§ 10.1-603.24. Definitions.

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

"Authority" means the Virginia Resources Authority.

"Cost," as applied to any project financed under the provisions of this article, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project.

"Department" means the Virginia Department of ~~Emergency Management~~ Conservation and Recreation.

"Flood prevention or protection" means the construction of hazard mitigation projects, acquisition of land, or implementation of land use controls that reduce or mitigate damage from coastal or riverine flooding.

"Flood prevention or protection study" means the conduct of a hydraulic or hydrologic study of a flood plain with historic and predicted floods, the assessment of flood risk, and the development of strategies to prevent or mitigate damage from coastal or riverine flooding.

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

"Local government" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution of Virginia or laws of the Commonwealth.

"Low-income geographic area" means any locality, or community within a locality, that has a median household income that is not greater than 80 percent of the local median household income, or any area in the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

"Nature-based solution" means an approach that reduces the impacts of flood and storm events through the use of environmental processes and natural systems. A nature-based solution may provide additional benefits beyond flood control, including recreational opportunities and improved water quality.

"Preexisting contractual arrangement" means a power purchase agreement or similar commercial arrangement, including options contracts, entered into in connection with a power generation facility subject to the RGGI that was entered into on or before May 16, 2017, and continuing in force and effect on July 1, 2020. "Preexisting contractual arrangement" does not include any life-of-the-unit contractual relationship.

§ 10.1-603.25. Virginia Community Flood Preparedness Fund; loan and grant program.

There shall be set apart a permanent and perpetual fund, to be known as the A. The Virginia Shoreline Resiliency Fund; ~~consisting of such is hereby continued in the state treasury as a special nonreverting fund to be known as the Virginia Community Flood Preparedness Fund (the Fund). The Fund shall be established on the books of the Comptroller. All sums that are designated for deposit in the Fund from revenue generated by the sale of emissions allowances pursuant to subdivision C 1 of § 10.1-1330, all sums that may be appropriated to the Fund by the General Assembly, all receipts by the Fund from the 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, shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and~~

60 be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each
61 fiscal year shall not revert to the general fund but shall remain in the Fund. ~~The Fund shall be~~
62 ~~administered by the Department as prescribed in this article. The Department shall establish guidelines~~
63 ~~regarding the distribution of loans from the Fund and prioritization of such loans.~~

64 B. Moneys in the Fund shall be used solely for the purposes of enhancing flood protection and
65 coastal resilience as required by this article. Expenditures and disbursements from the Fund shall be
66 made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the
67 Executive Director of the Authority. The Authority shall manage the Fund and shall establish interest
68 rates and repayment terms of such loans as provided in this article. The Authority may disburse from
69 the Fund its reasonable costs and expenses incurred in the management of the Fund.

70 C. The Fund shall be administered by the Department as prescribed in this article. The Department,
71 in consultation with the Secretary of Natural Resources and the Special Assistant to the Governor for
72 Coastal Adaptation and Protection, shall establish guidelines regarding the distribution and
73 prioritization of loans and grants, including loans and grants that support flood protection studies of
74 statewide or regional significance.

75 D. Localities shall use moneys from the Fund primarily for the purpose of creating a low-interest
76 loan program to help residents and businesses implementing flood prevention and protection projects and
77 studies in areas that are subject to recurrent flooding as confirmed by a locality-certified floodplain
78 manager. Moneys in the Fund may be used to mitigate future flood damage and to assist inland and
79 coastal communities across the Commonwealth that are subject to recurrent or repetitive flooding. No
80 less than 25 percent of the moneys disbursed from the Fund each year shall be used for projects in
81 low-income geographic areas. Priority shall be given to projects that implement community-scale hazard
82 mitigation activities and projects that use nature-based solutions to reduce flood risk.

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

Article 4.

Clean Energy and Community Flood Preparedness Act.

§ 10.1-1329. Definitions.

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

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

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

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

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

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

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

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

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

104 "Secretary" means the Secretary of Natural Resources.

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

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

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

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

120 1. Forty-five percent of the revenue shall be credited to the account established pursuant to the Fund
121 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 DMME 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 DMME, to administer and implement low-income energy efficiency programs pursuant to subdivision 2.

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

E. The Director shall establish and administer a preexisting contractual arrangement reserve account (Reserve Account). At least once per year, an entity may obtain allowances at a cost not exceeding 25 percent of the previous auction price from the Reserve Account to satisfy the total allowance obligation attributable to the preexisting contractual arrangement. Allowances placed into the Reserve Account shall not exceed (i) 2,000,000 allowances per year in 2021 and 2022; (ii) 1,250,000 allowances per year in 2023 and 2024; (iii) 600,000 allowances per year in 2025; and (iv) zero allowances for 2026 and every subsequent year. If the number of available allowances does not satisfy the requirements of every eligible entity, the Director shall make allowances available from the Reserve Account to eligible entities pro rata according to the allowances attributable to their preexisting contractual arrangements that they have not yet obtained from the Reserve Account.

F. An entity with a preexisting contractual arrangement may purchase allowances from the Reserve Account if:

1. A preexisting contractual arrangement exists and the entity is unable to pass through or recover its RGGI costs from the counterparty or other mechanism;

2. The number of allowances purchased from the Reserve Account by the entity does not exceed the equivalent tons of carbon dioxide that the entity emitted in the prior calendar year;

3. Such entity exercises any option that exists in the preexisting contractual arrangement to renegotiate the contract to include the cost of purchasing carbon dioxide allowances when the first opportunity to exercise any such option occurs; and

4. Each calendar year, the carbon dioxide authorized account representative for the compliance account makes all requests for purchase of allowances from the Reserve Account to the Department, and the requests include (i) a copy of the contractual arrangement if it has not been provided to the Department previously or, if it has, a letter certifying that the contract has not changed and (ii) a letter certifying that the entity is unable to recover the cost of allowances through electricity pricing or another mechanism.

G. Any allowances purchased from the Reserve Account in a year that are in excess of the entity's equivalent tons of carbon dioxide emissions in that year shall be forfeited by the entity and returned to the Department.

H. The Director shall require that an entity purchasing allowances from the Reserve Account certify at least once a year that it has made purchases of equipment or services in Virginia during the year or has a plan to make purchases of equipment or services in Virginia, including by any affiliated entities, equal to the value of the discount in price of allowances purchased from the Reserve Account as determined by the most recent auction price.

§ 10.1-1331. Energy conversion or energy tolling agreements.

If the Governor seeks to include the Commonwealth as a full participant in RGGI or another carbon trading program with an open auction of allowances, or if the Department implements the final carbon trading regulation as approved by the Board on April 19, 2019, (the Final Regulation) in order to establish a carbon dioxide cap and trade program that limits and reduces the total carbon dioxide emissions released by certain electric generation facilities and that complies with the RGGI model rule, then (i) the definition of the term "life-of-the-unit contractual arrangement" under the Final Regulation shall include any energy conversion or energy tolling agreement that has a primary term of 20 years or more and pursuant to which the purchaser is required to deliver fuel to the CO2 budget source or CO2 budget unit and is entitled to receive all of the nameplate capacity and associated energy generated by

183 *such source or unit for the entire contractual period and (ii) any purchaser under an energy conversion*
184 *or energy tolling agreement shall be responsible for acquiring any CO2 allowances required under the*
185 *Final Regulation in relation to a CO2 budget source or CO2 budget unit that is subject to such*
186 *agreement.*

187 **2. That the costs of allowances purchased through a market-based trading program consistent with**
188 **the provisions of Article 4 (§ 10.1-1329 et seq.) of Chapter 13 of Title 10.1 of the Code of Virginia,**
189 **as created by this act, are deemed to constitute environmental compliance project costs that may**
190 **be recovered by a Phase I Utility or Phase II Utility, as defined in subdivision A 1 of § 56-585.1 of**
191 **the Code of Virginia, pursuant to subdivision A 5 e of § 56-585.1 of the Code of Virginia.**

192 **3. That any moneys in the Virginia Shoreline Resiliency Fund as created by Chapter 762 of the**
193 **Acts of Assembly of 2016 shall remain in the Virginia Community Flood Preparedness Fund**
194 **pursuant to § 10.1-603.25 of the Code of Virginia, as amended by this act.**