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SENATE BILL NO. 1027

Offered January 17, 2020

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 and 10.1-1330, relating to Clean Energy and Community Flood Preparedness Act; fund.

Patrons—Lewis and Boysko

Referred to Committee on Agriculture, Conservation and Natural Resources

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 and 10.1-1330, 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.

§ 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 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 be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. ~~The Fund shall be administered by the Department as prescribed in this article. The Department shall establish guidelines regarding the~~

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SB1027

59 distribution of loans from the Fund and prioritization of such loans.

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

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

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

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

84 Article 4.

85 Clean Energy and Community Flood Preparedness Act.

86 § 10.1-1329. Definitions.

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

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

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

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

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

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

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

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

99 "Secretary" means the Secretary of Natural Resources.

100 § 10.1-1330. Clean Energy and Community Flood Preparedness.

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

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

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

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

118 2. Fifty percent of the revenue shall be credited to an account administered by DMME to support
119 low-income energy efficiency programs, including programs for eligible housing developments. DMME
120 shall work with the Department of Housing and Community Development to review and approve funding

121 proposals for such energy efficiency programs, and DMME and the Department of Housing and
122 Community Development together may use no more than five percent of the revenue allocated to DMME
123 pursuant to this subdivision to administer and implement such programs.

124 3. Three percent of the revenue shall be used to cover reasonable administrative expenses of the
125 Department in the administration of the revenue allocation, carbon dioxide emissions cap and trade
126 program, and auction.

127 4. Two percent of the revenue shall be used by the Department to carry out statewide climate change
128 planning and mitigation activities, including greenhouse gas monitoring and accounting, policy
129 development, and projects that reduce greenhouse gas emissions.

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

136 2. That any moneys in the Virginia Shoreline Resiliency Fund as created by Chapter 762 of the
137 Acts of Assembly of 2016 shall remain in the Virginia Community Flood Preparedness Fund
138 pursuant to § 10.1-603.25 of the Code of Virginia, as amended by this act.