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SENATE BILL NO. 1352

Offered January 13, 2021

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A *BILL to amend and reenact §§ 2.2-215, 10.1-603.25, 10.1-659, and 10.1-1330 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 10.1-658.1 through 10.1-658.7, relating to flood control; Department of Flood Control and Commonwealth Flood Control Board established; report.*

Patron—Lewis

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-215, 10.1-603.25, 10.1-659, and 10.1-1330 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 10.1-658.1 through 10.1-658.7 as follows:

§ 2.2-215. Position established; agencies for which responsible.

The position of Secretary of Natural Resources (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Conservation and Recreation, Department of Historic Resources, *Department of Flood Control*, Marine Resources Commission, Department of Wildlife Resources, Virginia Museum of Natural History, and the Department of Environmental Quality. The Governor may, by executive order, assign any state executive agency to the Secretary of Natural Resources, or reassign any agency listed in this section to another Secretary.

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

A. The Virginia Shoreline Resiliency Fund is hereby continued as a permanent and perpetual fund to be known as the Virginia Community Flood Preparedness Fund. 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 designated for deposit 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 any appropriated funds and all principal, interest accrued, and payments, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. All loans and grants provided under this article shall be deemed to promote the public purposes of enhancing flood prevention or protection and coastal resilience.

B. Moneys in the Fund shall be used solely for the purposes of enhancing flood prevention or protection and coastal resilience as required by this article. The Authority shall manage the Fund and shall establish interest rates and repayment terms of such loans as provided in this article in accordance with a memorandum of agreement with the Department. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the management of the Fund. The Department shall direct distribution of loans and grants from the Fund in accordance with the provisions of subsection D.

C. The Authority is authorized at any time and from time to time to pledge, assign, or transfer from the Fund or any bank or trust company designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of principal of, premium, if any, and interest on any and all bonds, as defined in § 62.1-199, issued to finance any flood prevention or protection project undertaken pursuant to the provisions of this article. In addition, the Authority is authorized at any time and from time to time to sell upon such terms and conditions as the Authority deems appropriate any loan or interest thereon made pursuant to this article. The net proceeds of the sale remaining after payment of costs and expenses shall be designated for deposit to, and become part of, the Fund.

D. The Fund shall be administered by the Department as prescribed in this article. The Department, in consultation with *the Commonwealth Flood Control Board*, the Secretary of Natural Resources, and the Special Assistant to the Governor for Coastal Adaptation and Protection, shall establish guidelines regarding the distribution and prioritization of loans and grants, including loans and grants that support flood prevention or protection studies of statewide or regional significance.

E. Localities shall use moneys from the Fund primarily for the purpose of implementing flood prevention and protection projects and studies 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

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59 damage and to assist inland and coastal communities across the Commonwealth that are subject to
60 recurrent or repetitive flooding. No less than 25 percent of the moneys disbursed from the Fund each
61 year shall be used for projects in low-income geographic areas. Priority shall be given to projects that
62 implement community-scale hazard mitigation activities that use nature-based solutions to reduce flood
63 risk.

64 F. Any locality is authorized to secure a loan made pursuant to this section by placing a lien up to
65 the value of the loan against any property that benefits from the loan. Such a lien shall be subordinate
66 to each prior lien on such property, except prior liens for which the prior lienholder executes a written
67 subordination agreement, in a form and substance acceptable to the prior lienholder in its sole and
68 exclusive discretion, that is recorded in the land records where the property is located.

69 G. Any locality using moneys in the Fund to provide a loan for a project in a low-income
70 geographic area is authorized to forgive the principal of such loan. If a locality forgives the principal of
71 any such loan, any obligation of the locality to repay that principal to the Commonwealth shall not be
72 forgiven and such obligation shall remain in full force and effect. The total amount of loans forgiven by
73 all localities in a fiscal year shall not exceed 30 percent of the amount appropriated in such fiscal year
74 to the Fund by the General Assembly.

75 **§ 10.1-658.1. Definitions.**

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

77 *"Board" means the Commonwealth Flood Control Board established pursuant to § 10.1-658.3.*

78 *"Department" means the Department of Flood Control established pursuant to § 10.1-658.2.*

79 **§ 10.1-658.2. Department of Flood Control; statement of policy.**

80 A. *There is hereby created a Department of Flood Control under the authority of the Secretary of*
81 *Natural Resources to provide technical expertise in all aspects related to flood control, mitigation,*
82 *abatement, and recovery.*

83 B. *The Department shall include a Director, to be appointed by the Secretary of Natural Resources.*

84 C. *The Director shall maintain a staff with combined expertise in floodplain management, stormwater*
85 *modeling, civil engineering, coastal engineering, geology, nature-based green infrastructure, land use*
86 *planning, economics, benefit-cost modeling, environmental policy development, environmental justice,*
87 *and financial management, including grant management, bond ratings, and investment strategies.*

88 D. *The purposes of the Department are to:*

89 1. *Direct a comprehensive flood control program to include data collection, planning, research,*
90 *analysis, modeling, and project management related to flood control and flood control projects in*
91 *Virginia;*

92 2. *Serve as the nonfederal sponsor for civil works projects managed by the United States Army*
93 *Corps of Engineers;*

94 3. *Provide technical assistance in the execution of duties of the Board; and*

95 4. *Perform all acts necessary or convenient to carry out the purposes of this article.*

96 E. *Funding for the Department shall be as allocated in a general appropriation act and as provided*
97 *pursuant to § 10.1-1330.*

98 **§ 10.1-658.3. Commonwealth Flood Control Board; purpose.**

99 *The Commonwealth Flood Control Board (the Board) is established as a policy board in the*
100 *executive branch of state government.*

101 **§ 10.1-658.4. Membership; terms; quorum; meetings.**

102 *The Board shall have a total membership of 14 members that shall consist of 10 nonlegislative*
103 *citizen members and four ex officio members. Nonlegislative citizen members shall be experienced in*
104 *flood control issues and be appointed by the Governor. The Secretaries of Natural Resources,*
105 *Transportation, Public Safety, and Commerce and Trade, or their designees, shall serve ex officio with*
106 *voting privileges. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth.*

107 *Ex officio members of the Board shall serve terms coincident with their terms of office.*

108 *Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms.*
109 *Vacancies shall be filled in the same manner as the original appointments. All members may be*
110 *reappointed.*

111 *After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of*
112 *five years.*

113 *The Board shall elect a chairman and vice-chairman from among its membership. A majority of the*
114 *members shall constitute a quorum. The meetings of the Board shall be held at the call of the chairman*
115 *or whenever the majority of the members so request.*

116 **§ 10.1-658.5. Compensation; expenses.**

117 *Members shall receive such compensation for the performance of their duties as provided in §*
118 *2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the*
119 *performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of*
120 *compensation and expenses of the members shall be provided by the Department.*

§ 10.1-658.6. Powers and duties of the Board.

The Board shall have the power and duty to:

1. Oversee the implementation and updating of the Coastal Resiliency Master Plan no less than once every five years;

2. Annually evaluate the alignment of the Commonwealth's flood mitigation objectives with the following state programs, or their successors in interest, and any associated grants and loans: (i) the Six-Year Improvement Program of the Virginia Department of Transportation; (ii) the Brownfields program of the Virginia Economic Development Partnership Authority; (iii) the Virginia Department of Transportation long-range transportation plan; (iv) the Virginia Department of Emergency Management Building Resilient Infrastructure in Communities Grant; (v) the Department of Conservation and Recreation Dam Safety, Flood Prevention and Protection Assistance Fund; (vi) the Virginia Department of Emergency Management hazard mitigation plans and grants; (vii) the Department of Environmental Quality Water Quality Improvement Fund; (viii) the Department of Health Clean Water Revolving Fund; (ix) the Department of Housing and Community Development Community Block Development Grant program; and (x) the Department of Health Drinking Water Revolving Fund; and

3. Submit an annual report to the Governor and the General Assembly for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. The chairman of the Board shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ 10.1-658.7. Staffing.

The Department shall provide staff support to the Board. All agencies of the Commonwealth shall provide assistance to the Board, upon request.

§ 10.1-659. Flood protection programs; coordination.

The Board and Department shall coordinate any action taken pursuant to the provisions of this chapter ~~shall be coordinated~~ with the Virginia Coastal Resilience Master Plan and federal, state, and local flood prevention and water quality programs to minimize loss of life, property damage, and negative impacts on the environment. This program coordination shall include ~~but not be limited to~~ the following: flood prevention, flood plain management, small watershed protection, dam safety, shoreline erosion and public beach preservation, and soil conservation programs of the Department of Conservation and Recreation; the construction activities of the Department of Transportation, including projects that result in hydrologic modification of rivers, streams, and flood plains; the nontidal wetlands, water quality, Chesapeake Bay Preservation Area criteria, stormwater management, erosion and sediment control, and other water management programs of the State Water Control Board; the Virginia Coastal Zone Management Program at the Department of Environmental Quality; forested watershed management programs of the Department of Forestry; the agricultural stewardship, farmland preservation, and disaster assistance programs of the Department of Agriculture and Consumer Services; the statewide building code and other land use control programs of the Department of Housing and Community Development; the habitat management programs of the Virginia Marine Resources Commission; the hazard mitigation planning and disaster response programs of the Department of Emergency Management; the fish habitat protection programs of the Department of Wildlife Resources; the mineral extraction regulatory program of the Department of Mines, Minerals and Energy; the flood plain restrictions of the Virginia Waste Management Board; flooding-related research programs of the state universities; local government assistance programs of the Virginia Soil and Water Conservation Board; the Virginia Antiquities Act program of the Department of Historic Resources; and any other state agency programs deemed necessary by the Director, the Chief Resilience Officer of the Commonwealth, and the Special Assistant to the Governor for Coastal Adaptation and Protection. The Department shall also coordinate with soil and water conservation districts, Virginia Cooperative Extension agents, and planning district commissions, and shall coordinate and cooperate with localities in rendering assistance to such localities in their efforts to comply with the planning, subdivision of land, and zoning provisions of Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The Director and either the Special Assistant to the Governor for Coastal Adaptation and Protection or the Chief Resilience Officer shall jointly hold meetings of representatives of these programs, entities, and localities in order to determine, coordinate, and prioritize the Commonwealth's efforts and expenditures to increase flooding resilience. The Department shall cooperate with other public and private agencies having flood plain management programs and shall coordinate its responsibilities under this article and any other law. These activities shall constitute the Commonwealth's flood prevention and protection program.

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

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

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

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

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

198 2. Fifty percent of the revenue shall be credited to an account administered by DHCD to support
199 low-income energy efficiency programs, including programs for eligible housing developments. DHCD
200 shall review and approve funding proposals for such energy efficiency programs, and DMME shall
201 provide technical assistance upon request. Any sums remaining within the account administered by
202 DHCD, including interest thereon, at the end of each fiscal year shall not revert to the general fund but
203 shall remain in such account to support low-income energy efficiency programs.

204 3. Three percent of the revenue shall be used to (i) cover reasonable administrative expenses of the
205 Department in the administration of the revenue allocation, carbon dioxide emissions cap and trade
206 program, and auction ~~and~~; (ii) carry out statewide climate change planning and mitigation activities; *and*
207 *(iii) provide funding as necessary for the administration of the Department of Flood Control.*

208 4. Two percent of the revenue shall be used by DHCD, in partnership with DMME, to administer
209 and implement low-income energy efficiency programs pursuant to subdivision 2.

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

216 **2. That the initial appointments by the Governor of nonlegislative citizen members of the**
217 **Commonwealth Flood Control Board, as created by this act, shall be staggered as follows: four**
218 **members for a term of five years, four members for a term of three years, and two members for a**
219 **term of one year.**