

23100514D

SENATE BILL NO. 1001

Offered January 11, 2023

Prefiled January 6, 2023

A BILL to amend and reenact §§ 10.1-1307, 10.1-603.25 and 45.2-1701.1 of the Code of Virginia and to repeal Article 4 (§§ 10.1-1329, 10.1-1330, and 10.1-1331) of Chapter 13 of Title 10.1 of the Code of Virginia, relating to repeal of the Clean Energy and Community Flood Preparedness Act.

 Patron—Stuart

 Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1307, 10.1-603.25 and 45.2-1701.1 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1307. Further powers and duties of Board and Department.

A. The Board shall have the power to control and regulate its internal affairs. The Department shall have the power to initiate and supervise research programs to determine the causes, effects, and hazards of air pollution; initiate and supervise statewide programs of air pollution control education; cooperate with and receive money from the federal government or any county or municipal government, and receive money from any other source, whether public or private; develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth; and advise, consult, and cooperate with agencies of the United States and all agencies of the Commonwealth, political subdivisions, private industries, and any other affected groups in furtherance of the purposes of this chapter.

B. The Board may adopt by regulation emissions standards controlling the release into the atmosphere of air pollutants from motor vehicles, only as provided in § 10.1-1307.05 and Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2.

C. After any regulation has been adopted by the Board pursuant to § 10.1-1308, the Department may grant local variances therefrom, if it finds after an investigation and hearing that local conditions warrant; except that no local variances shall be granted from regulations adopted by the Board pursuant to § 10.1-1308 related to the requirements of subsection E of § 10.1-1308 ~~or Article 4 (§ 10.1-1329 et seq.)~~. If local variances are permitted, the Department shall issue an order to this effect. Such order shall be subject to revocation or amendment at any time if the Department, after a hearing, determines that the amendment or revocation is warranted. Variances and amendments to variances shall be adopted only after a public hearing has been conducted pursuant to the public advertisement of the subject, date, time, and place of the hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance.

D. After the Board has adopted the regulations provided for in § 10.1-1308, the Department shall have the power to (i) initiate and receive complaints as to air pollution; (ii) hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce the Board's regulations pursuant to § 10.1-1309; and (iii) institute legal proceedings, including suits for injunctions for the enforcement of orders, regulations, and the abatement and control of air pollution and for the enforcement of penalties.

E. The Board in making regulations; the Department in approving variances, control programs, or permits; and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;

2. The social and economic value of the activity involved;

3. The suitability of the activity to the area in which it is located, except that consideration of this factor shall be satisfied if the local governing body of a locality in which a facility or activity is proposed has resolved that the location and operation of the proposed facility or activity is suitable to the area in which it is located; and

4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

F. The Department shall conduct the hearings provided for in this chapter.

G. The Board shall not:

1. Adopt any regulation limiting emissions from wood heaters; or

INTRODUCED

SB1001

59 2. Enforce against a manufacturer, distributor, or consumer any federal regulation limiting emissions
60 from wood heaters adopted after May 1, 2014.

61 H. The Department shall submit an annual report to the Governor and General Assembly on or
62 before October 1 of each year on matters relating to the Commonwealth's air pollution control policies
63 and on the status of the Commonwealth's air quality.

64 I. In granting a permit pursuant to this section, the Department shall provide in writing a clear and
65 concise statement of the legal basis, scientific rationale, and justification for the decision reached. When
66 the decision of the Department is to deny a permit, pursuant to this section, the Department shall, in
67 consultation with legal counsel, provide a clear and concise statement explaining the reason for the
68 denial, the scientific justification for the same, and how the Department's decision is in compliance with
69 applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by
70 certified mail to the permittee or applicant.

71 **§ 10.1-603.25. Virginia Community Flood Preparedness Fund; loan and grant program.**

72 A. The Virginia Shoreline Resiliency Fund is hereby continued as a permanent and perpetual fund to
73 be known as the Virginia Community Flood Preparedness Fund. All ~~sums that are designated for deposit~~
74 ~~in the Fund from revenue generated by the sale of emissions allowances pursuant to subdivision C 4 of~~
75 ~~§ 10.1-1330, all sums that may be appropriated to the Fund by the General Assembly, all receipts by the~~
76 ~~Fund from the repayment of loans made by it to local governments, all income from the investment of~~
77 ~~moneys held in the Fund, and any other sums designated for deposit to the Fund from any source,~~
78 ~~public or private, including any federal grants and awards or other forms of assistance received by the~~
79 ~~Commonwealth that are eligible for deposit in the Fund under federal law, shall be designated for~~
80 ~~deposit to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to~~
81 ~~it. Any moneys remaining in the Fund, including any appropriated funds and all principal, interest~~
82 ~~accrued, and payments, at the end of each fiscal year shall not revert to the general fund but shall~~
83 ~~remain in the Fund. All loans and grants provided under this article shall be deemed to promote the~~
84 ~~public purposes of enhancing flood prevention or protection and coastal resilience.~~

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

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

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

104 E. Localities shall use moneys from the Fund primarily for the purpose of implementing flood
105 prevention and protection projects and studies in areas that are subject to recurrent flooding as confirmed
106 by a locality-certified floodplain manager. Moneys in the Fund may be used to mitigate future flood
107 damage and to assist inland and coastal communities across the Commonwealth that are subject to
108 recurrent or repetitive flooding. No less than 25 percent of the moneys disbursed from the Fund each
109 year shall be used for projects in low-income geographic areas. Priority shall be given to projects that
110 implement community-scale hazard mitigation activities that use nature-based solutions to reduce flood
111 risk.

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

117 G. Any locality using moneys in the Fund to provide a loan for a project in a low-income
118 geographic area is authorized to forgive the principal of such loan. If a locality forgives the principal of
119 any such loan, any obligation of the locality to repay that principal to the Commonwealth shall not be
120 forgiven and such obligation shall remain in full force and effect. The total amount of loans forgiven by

all localities in a fiscal year shall not exceed 30 percent of the amount appropriated in such fiscal year to the Fund by the General Assembly.

§ 45.2-1701.1. Public disclosure of certain electric generating facility closures.

A. The provisions of this section shall apply to any electric generating facility that:

1. Has a nameplate generating capacity of 80 megawatts or more;
2. Is located in the Commonwealth;
3. Emits carbon dioxide as a byproduct of combusting fuel, whether or not certificated by the State Corporation Commission pursuant to subsection D of § 56-580; and
4. Is subject to, and not exempt from, regulations adopted pursuant to subsection E of § 10.1-1308 or § 10.1-1330.

B. Within 30 days of an owner of an electric generating facility making public the decision to close such facility, or within 30 days of the owner of an electric generating facility making a filing with the U.S. Securities and Exchange Commission regarding a material impact to the cost, operations, or financial condition of the owner, which material impact is a direct precursor to the closure of the electric generating facility, the owner shall send a written notice of the impending closure to:

1. The governing body of the locality where the facility is located;
2. The governing body of any locality adjoining the locality where the facility is located;
3. Any town council located within a county described in subdivision 1;
4. Any planning district commission of any locality described in subdivision 1 or 2;
5. The State Corporation Commission Division of Public Utility Regulation;
6. The Department and the Division;
7. The Department of Housing and Community Development;
8. PJM Interconnection, LLC;
9. The Virginia Employment Commission;
10. The Department of Environmental Quality; and
11. The Virginia Council on Environmental Justice.

C. The notice required by subsection B shall include, at a minimum, (i) the anticipated closure date of the facility; (ii) references to any website maintained by the owner containing closure information; (iii) a list of permits obtained from a local government, the State Air Pollution Control Board, the State Water Control Board, or the Department of Environmental Quality, including the permit number and date of issuance; (iv) anticipated future use of the facility site, if known; (v) workforce transition assistance information; and (vi) decommissioning information. If the owner of the facility is a registrant with the U.S. Securities and Exchange Commission, any filings mentioning the impending closure shall also be included with the notice.

D. In the six months following receipt of the notice required by subsection B, the governing body of the locality where the facility is located shall conduct at least three public hearings, which may be part of a regular meeting agenda, where at least one representative of the owner of the facility being closed shall be present, make a presentation regarding the impending closure, and take questions from the governing body and the public.

E. In the six months following receipt of the notice required by subsection B, the planning district commission of the locality where the facility is located shall conduct at least one public hearing, which may be part of a regular meeting agenda, where at least one representative of the owner of the facility being closed shall be present, make a presentation regarding the impending closure, and take questions from the planning district commission and the public.

F. The Division shall maintain a public website listing the facilities subject to this section and their anticipated closure dates, if such dates are reasonably known by virtue of the laws of the Commonwealth or a public record or filing with an agency of the Commonwealth, including the State Corporation Commission, and a link shall be provided to the facilities' environmental protection or remediation obligations included in permits obtained from the Department, State Air Pollution Control Board, State Water Control Board, Department of Environmental Quality, or local governing body. At least every 12 months, the State Corporation Commission shall transmit to the Division any information that it reasonably believes would necessitate updates to the anticipated closure dates or other information contained on the Division's website.

G. As providing advance notice to affected communities of an impending closure of a facility under this section is a matter of vital importance for public policy, this section shall be liberally construed. The obligations imposed on agencies of the Commonwealth under this section are to be construed in favor of public disclosure of the information required by subsection F.

H. Notwithstanding the provisions of subsection A, the provisions of this section shall not apply to any electric generating facility that has a nameplate generating capacity of 90 megawatts or less and that filed a deactivation notice with PJM Interconnection, LLC, prior to September 1, 2019.

2. That Article 4 (§§ 10.1-1329, 10.1-1330, and 10.1-1331) of Chapter 13 of Title 10.1 of the Code

182 of Virginia is repealed.

183 3. That the Director of the Department of Environmental Quality shall take all steps necessary to
184 suspend the Commonwealth's participation in the auction program to sell allowances into a
185 market-based trading program consistent with the Regional Greenhouse Gas Initiative.