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SENATE BILL NO. 1335

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources on January 28, 2025)

(Patron Prior to Substitute—Senator Marsden)

A BILL to amend and reenact §§ 10.1-603.24, 10.1-603.25, and 10.1-1330 of the Code of Virginia, relating to Virginia Community Flood Preparedness Fund; loan and grant program; eligible recipients; federally recognized tribes.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-603.24, 10.1-603.25, and 10.1-1330 of the Code of Virginia are amended and reenacted as follows:

§ 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, federally recognized tribe, or Virginia recognized tribe 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 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 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.

A. The Virginia Community Flood Preparedness Fund is hereby established as a permanent and perpetual 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, federally recognized tribes, and Virginia recognized tribes, 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

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60 provisions of this article. In addition, the Authority is authorized at any time and from time to time to sell
61 upon such terms and conditions as the Authority deems appropriate any loan or interest thereon made
62 pursuant to this article. The net proceeds of the sale remaining after payment of costs and expenses shall be
63 designated for deposit to, and become part of, the Fund.

64 D. 1. The Fund shall be administered by the Department as prescribed in this article. The Department, in
65 consultation with the Secretary of Natural and Historic Resources and the Chief Resilience Officer of the
66 Commonwealth, shall establish guidelines regarding the distribution and prioritization of loans and grants,
67 including loans and grants that support flood prevention or protection studies of statewide or regional
68 significance. The Department shall develop and provide an opportunity for a 30-day public comment period
69 prior to each new grant or loan offering to solicit feedback on proposed revisions to the Virginia Community
70 Flood Preparedness Manual. A record of each application for a grant or loan and the action taken thereon
71 shall be available for public inspection at the office of the Department and on a publicly accessible website.

72 2. The Director shall convene an Advisory Review Committee (the Committee) to assist in the distribution
73 of loans and grants from the Fund. The Committee shall review applications to the Fund and make
74 recommendations on the disbursement of moneys from the Fund and any other appropriate issues to the
75 Department, the Secretary of Natural and Historic Resources, and the Chief Resilience Officer of the
76 Commonwealth. The Committee shall include representatives from the Department of Emergency
77 Management, the Department of Environmental Quality, the Department of Housing and Community
78 Development, a nonprofit group engaged in resilience efforts, the agriculture industry, the manufacturing
79 industry, and the business community, the Virginia Director of the Chesapeake Bay Commission, and others
80 as the Director deems appropriate. Appointed members of the Committee shall serve without compensation.

81 E. Localities, *federally recognized tribes*, and *Virginia recognized tribes* shall use moneys from the Fund
82 primarily for the purpose of implementing flood prevention and protection projects and studies in areas that
83 are subject to recurrent flooding as confirmed by a locality-certified floodplain manager. Moneys in the Fund
84 may be used to mitigate future flood damage and to assist inland and coastal communities across the
85 Commonwealth that are subject to recurrent or repetitive flooding. No less than 25 percent of the moneys
86 disbursed from the Fund each year shall be used for projects in low-income geographic areas. Priority shall
87 be given to projects that implement community-scale hazard mitigation activities that use nature-based
88 solutions to reduce flood risk.

89 F. Any locality, *federally recognized tribe*, or *Virginia recognized tribe* is authorized to secure a loan
90 made pursuant to this section by placing a lien up to the value of the loan against any property that benefits
91 from the loan. Such a lien shall be subordinate to each prior lien on such property, except prior liens for
92 which the prior lienholder executes a written subordination agreement, in a form and substance acceptable to
93 the prior lienholder in its sole and exclusive discretion, that is recorded in the land records where the property
94 is located.

95 G. Any locality, *federally recognized tribe*, or *Virginia recognized tribe* using moneys in the Fund to
96 provide a loan for a project in a low-income geographic area is authorized to forgive the principal of such
97 loan. If a locality, *federally recognized tribe*, or *Virginia recognized tribe* forgives the principal of any such
98 loan, any obligation of the locality, *federally recognized tribe*, or *Virginia recognized tribe* to repay that
99 principal to the Commonwealth shall not be forgiven and such obligation shall remain in full force and effect.
100 The total amount of loans forgiven by all localities, *federally recognized tribes*, and *Virginia recognized tribe*
101 *s* in a fiscal year shall not exceed 30 percent of the amount appropriated in such fiscal year to the Fund by the
102 General Assembly.

103 § 10.1-1330. Clean Energy and Community Flood Preparedness.

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

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

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

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

120 2. Fifty percent of the revenue shall be credited to an account administered by DHCD to support low-

121 income energy efficiency programs, including programs for eligible housing developments. DHCD shall
122 review and approve funding proposals for such energy efficiency programs, and DOE shall provide technical
123 assistance upon request. Any sums remaining within the account administered by DHCD, including interest
124 thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in such account to
125 support low-income energy efficiency programs.

126 3. Three percent of the revenue shall be used to (i) cover reasonable administrative expenses of the
127 Department in the administration of the revenue allocation, carbon dioxide emissions cap and trade program,
128 and auction and (ii) carry out statewide climate change planning and mitigation activities.

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

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