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**HOUSE BILL NO. 397**

Offered January 14, 2026

Prefiled January 12, 2026

*A BILL to amend and reenact §§ 10.1-603.25, 10.1-1330, and 56-596.2:2 of the Code of Virginia, relating to clean energy and community flood preparedness; market-based trading program.*

Patron—Herring

Committee Referral Pending

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-603.25, 10.1-1330, and 56-596.2:2 of the Code of Virginia are amended and reenacted as follows:**

**§ 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 *B* 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 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. 1. The Fund shall be administered by the Department as prescribed in this article. The Department, in consultation with the Secretary of Natural and Historic Resources and the Chief Resilience Officer of the Commonwealth, 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. The Department shall develop and provide an opportunity for a 30-day public comment period prior to each new grant or loan offering to solicit feedback on proposed revisions to the Virginia Community Flood Preparedness Manual. A record of each application for a grant or loan and the action taken thereon shall be available for public inspection at the office of the Department and on a publicly accessible website.

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

E. Localities, federally recognized tribes, and Virginia recognized tribes shall use moneys from the Fund

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

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

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

#### **§ 10.1-1330. Clean Energy and Community Flood Preparedness; report.**

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

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

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

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

~~D. C. The Department, the Department of Conservation and Recreation, DHCD, and DOE 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.~~

#### **§ 56-596.2:2. (Expires January 1, 2031) Energy efficiency savings targets for certain customers.**

A. The Commission shall establish for Phase II Utilities annual energy efficiency savings targets for customers who are low-income, elderly, disabled, or veterans of military service to be achieved through utility energy efficiency programs (low-income energy efficiency savings programs) designed to benefit such customers, provided that each year's target shall be measured by the total combined kilowatt-hour savings achieved by electric utility energy efficiency and demand response programs and measures installed for such customers in that program year, as well as savings still being achieved by measures and programs

implemented for such customers in prior years, and that such annual targets shall be at least one percent of the average annual energy retail sales by that utility to those customers, to the extent that the potential exists and is reasonably achievable as determined by the Commission. In establishing such targets, the Commission shall seek to optimize energy efficiency and the health and safety benefits of utility energy efficiency programs.

B. In advance of the effective date of such annual energy efficiency targets, the first of which shall be for 2025, the Commission shall, after notice and opportunity for hearing, initiate proceedings to establish such targets and the appropriate retail sales against which the energy efficiency targets will be measured. In setting such targets, the Commission shall consider the impact and savings of energy efficiency programs authorized by subdivision *B* 2 of § 10.1-1330. The Commission shall also consider federal loan guarantees, grant funds, and rebates made available pursuant to the federal Inflation Reduction Act (P.L. 117-169) or other similar federal legislation that facilitates energy efficiency projects.

C. For the time period 2028 through 2030, the Commission shall review and, at its discretion, revise such minimum annual targets to ensure continued consistency with the provisions of this section. All savings from low-income energy efficiency programs shall be applied to the energy efficiency savings set forth in subsection B of § 56-596.2.

D. In providing such low-income energy efficiency programs, Phase II Utilities shall make best efforts to coordinate such energy efficiency programs with any health and safety upgrades provided through energy efficiency programs authorized by subdivision *B* 2 of § 10.1-1330, when reasonably feasible to do so and at the utility's sole discretion.

E. For the purposes of this section, "Phase II Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1.

**2. That all agencies or authorities of the Commonwealth with responsibilities identified in § 10.1-1330 of the Code of Virginia, as amended by this act, shall take all actions necessary to rejoin the Regional Greenhouse Gas Initiative, as defined in § 10.1-1329 of the Code of Virginia, and resume participation therein. Such required actions include (i) repealing the final regulation titled 9VAC5-140, Regulation for Emissions Trading Programs, published in the Virginia Register of Regulations on July 31, 2023; (ii) reissuing the final regulation titled 9VAC5-140, Regulation for Emissions Trading Programs, published in the Virginia Register of Regulations on August 3, 2020; (iii) selling the allowances generated by the reissued regulatory program through auctions run by the Regional Greenhouse Gas Initiative; (iv) distributing auction proceeds in accordance with subsection B of § 10.1-1330 of Code of Virginia, as amended by this act; and (v) providing annual reporting in accordance with subsection C of § 10.1-1330 of Code of Virginia, as amended by this act. Any regulatory action necessary to effectuate the requirements of this enactment is hereby exempted from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). The Department of Environmental Quality shall complete such regulatory action without further action by the State Air Pollution Control Board, and the reissued regulatory program shall take effect no later than 90 days from the effective date of this act.**