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HOUSE BILL NO. 397

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on January 28, 2026)

(Patron Prior to Substitute—Delegate Herring)

A BILL to amend and reenact §§ 10.1-1330 and 10.1-1331 of the Code of Virginia, relating to clean energy and community flood preparedness; market-based trading program.

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1330 and 10.1-1331 of the Code of Virginia are amended and reenacted as follows:

§ 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.) *The Board shall establish and maintain a market-based trading regulation, consistent with the RGGI program, to reduce carbon dioxide emissions from electricity generating units in the Commonwealth that shall be implemented and administered by the Department.*

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. 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. 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.

§ 10.1-1331. Energy conversion or energy tolling agreements.

If the Governor seeks to include the Commonwealth as a full participant in RGGI or another carbon trading program with an open auction of allowances, or if the Department implements the final carbon trading regulation as approved by the Board on April 19, 2019, (the Final Regulation) in order to establish a carbon dioxide cap and trade program that limits and reduces the total carbon dioxide emissions released by certain electric generation facilities and that complies with the RGGI model rule, then (i) the ~~The~~ definition of the term "life-of-the-unit contractual arrangement" under the ~~Final Regulation~~ regulation established by the Board pursuant to § 10.1-1330 shall include any energy conversion or energy tolling agreement that has a primary term of 20 years or more and pursuant to which the purchaser is required to deliver fuel to the CO2 budget source or CO2 budget unit and is entitled to receive all of the nameplate capacity and associated energy generated by such source or unit for the entire contractual period and (ii) any purchaser under an energy conversion or energy tolling agreement shall be responsible for acquiring any CO2 allowances required under the ~~Final Regulation~~ regulation established by the Board pursuant to § 10.1-1330 in relation

60 to a CO2 budget source or CO2 budget unit that is subject to such agreement.

61 **2. That the provisions of this act are declaratory of existing law.**