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HOUSE BILL NO. 2233

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend the Code of Virginia by adding in Title 10.1 a chapter numbered 10.4, consisting of sections numbered 10.1-1028 through 10.1-1034, relating to Extreme Weather Relief Act established.

Patron—Cousins

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 10.1 a chapter numbered 10.4, consisting of sections numbered 10.1-1028 through 10.1-1034, as follows:

CHAPTER 10.4.**EXTREME WEATHER RELIEF ACT.****§ 10.1-1028. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Coal" means bituminous coal, anthracite coal, and lignite.

"Controlled group" means two or more entities treated as a single employer under (i) 26 U.S.C. § 52(a) or (b), without regard to 26 U.S.C. § 1563(b)(2)(C), or (ii) 26 U.S.C. § 414(m) or (o).

"Cost recovery demand" means a charge asserted against a responsible party for cost recovery payments under the Program for payment to the Fund.

"Covered greenhouse gas emissions" means the total quantity of greenhouse gases released into the atmosphere during the covered period, expressed in metric tons of carbon dioxide equivalent, resulting from the use of fossil fuels extracted or refined by an entity.

"Covered period" means the period that began on January 1, 1995, and ended on December 31, 2024.

"Crude oil" means oil or petroleum of any kind and in any form, including bitumen, oil sands, heavy oil, conventional and unconventional oil, shale oil, natural gas liquids, condensates, and related fossil fuels.

"Entity" means any individual, trustee, agent, partnership, association, corporation, company, municipality, political subdivision, or other legal organization, including a foreign nation, that holds or held an ownership interest in a fossil fuel business during the covered period.

"Environmental justice community" means the same as such term is defined in § 2.2-234.

"Extreme Weather Relief Program" means the program established by this chapter.

"Extreme weather relief project" means a project designed to respond to, repair, or adapt to negative impacts caused by climate change-fueled extreme weather events. "Extreme weather relief projects" include repairing disaster-damaged public infrastructure, including roads, bridges, railroads, and transit systems; repairing stormwater drainage systems; providing direct relief in the form of monetary payments to individuals and businesses impacted by extreme weather events; providing direct assistance to localities recovering from extreme weather events; providing medical care to treat illness or injury caused by the effects of extreme weather; relocating, elevating, or retrofitting sewage treatment plants and other infrastructure impacted by flooding; restoring public services affected by extreme weather events; upgrading parts of the electrical grid to increase stability and resilience, including resilient clean energy infrastructure; and providing efforts to remediate disaster-damaged wetlands, forests, waterways, and other natural resources.

"Fossil fuel" means coal, petroleum products, and fuel gases.

"Fossil fuel business" means a business engaging in the extraction of fossil fuels or the refining of petroleum products.

"Fuel gas" means methane, natural gas, liquefied natural gas, and manufactured fuel gases.

"Fund" means the Extreme Weather Relief Program Fund established pursuant to § 10.1-1030.

"Greenhouse gas" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride or any other greenhouse gas identified by the Department of Environmental Quality pursuant to § 10.1-1307.04.

"Notice of cost recovery demand" means the written communication from the Department informing a responsible party of the amount of the cost recovery demand payable to the Fund.

"Petroleum product" means any product refined or re-refined from synthetic or crude oil or crude oil extracted from natural gas liquids or other sources.

"Program" means the Extreme Weather Relief Program established under this chapter.

"Qualifying expenditure" means an authorized payment from the Fund to pay reasonable expenses associated with the implementation and administration of the Fund and the Program and to pay for an

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extreme weather relief project, including its operation, monitoring, and maintenance.

"Resilient clean energy infrastructure" means any energy resource that is consistent with the Commonwealth Clean Energy Policy established in §45.2-1706.1 and does not require interconnection to the transmission system.

"Responsible party" means any entity or a successor in interest to an entity that during any part of the covered period was engaged in the trade or business of extracting fossil fuel or refining crude oil and is determined by the Department to be attributable for more than one billion metric tons of covered greenhouse gas emissions during the covered period. "Responsible party" does not include any person who lacks sufficient connection with the Commonwealth to satisfy the nexus requirements of the Constitution of the United States.

§ 10.1-1029. Extreme Weather Relief Program.

There is hereby established the Extreme Weather Relief Program administered by the Department, in consultation with the Department of Environmental Quality, the Department of Energy, and the Department of Emergency Management. The purposes of the Program shall be to:

1. Secure compensatory payments from responsible parties based on a standard of strict liability to provide a source of revenue for extreme weather relief projects within the Commonwealth;

2. Determine proportional liability of responsible parties;

3. Impose cost recovery demands on responsible parties and issue notices of cost recovery demands;

4. Accept and collect payment from responsible parties; and

5. Disburse funds to implement extreme weather relief projects.

§ 10.1-1030. Extreme Weather Relief Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Extreme Weather Relief Fund. The Fund shall be established on the books of the Comptroller. All payments made by a responsible party in response to a cost recovery demand pursuant to § 10.1-1031, all funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited 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 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of implementing and administering the Program and for extreme weather relief projects, including their operation, monitoring, and maintenance. At least 50 percent of moneys in the Fund shall be dedicated to projects in environmental justice communities. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

§ 10.1-1031. Liability of responsible parties.

A. A responsible party shall be strictly liable for a share of the costs of extreme weather relief projects and all qualifying expenditures supported by the Fund. For purposes of this chapter, entities in a controlled group shall be treated as a single entity for the purposes of identifying responsible parties, and are jointly and severally liable for payment of any cost recovery demand owed by any entity in the controlled group.

B. With respect to each responsible party, the cost recovery demand shall be equal to an amount that bears the same ratio to the cost to the Commonwealth and its residents, as calculated by the State Treasurer pursuant to § 10.1-1032, from the emission of covered greenhouse gases during the covered period as the responsible party's applicable share of covered greenhouse gas emissions bears to the aggregate applicable shares of covered greenhouse gas emissions resulting from the use of fossil fuels extracted or refined during the covered period.

C. If a responsible party owns a minority interest of 10 percent or more in another entity, the responsible party's applicable share of covered greenhouse gas emissions shall be increased by the applicable share of covered greenhouse gas emissions for the entity in which the responsible party holds a minority interest multiplied by the percentage of the minority interest held by the responsible party.

D. The Department shall use the U.S. Environmental Protection Agency's Emissions Factors for Greenhouse Gas Inventories as applied to fossil fuel volume data for the purpose of determining the amount of covered greenhouse gas emissions attributable to any entity from the fossil fuels attributable to the entity.

E. The Department may adjust the cost recovery demand amount of a responsible party who refined petroleum products or who is a successor in interest to an entity that refines petroleum products if the responsible party establishes to the satisfaction of the Department that (i) a portion of the cost recovery demand amount was attributable to the refining of crude oil extracted by another responsible party and (ii) the crude oil extracted by the other entity was accounted for when the Department determined the cost recovery demand amount for the other entity or a successor in interest of the other entity.

F. The Department shall issue the cost recovery demands required under this section not later than six months following the adoption of the regulations issued by the Board pursuant to § 10.1-1033.

G. A responsible party shall pay the cost recovery demand amount in full not later than six months following the Department's issuance of the cost recovery demand unless the responsible party elects to pay

the cost recovery demand amount in nine annual installments pursuant to subsection H.

H. For a responsible party that elects to pay the cost recovery demand amount in nine annual installments, the first installment shall be paid not later than six months following the Department's issuance of the cost recovery demand and shall be equal to 20 percent of the total cost recovery demand amount. Each subsequent installment shall be paid one year from the initial payment and in each subsequent year and shall be equal to 10 percent of the total cost recovery demand amount. The Department may charge reasonable interest on each installment payment or a payment delayed for any other reason and, at the Department's discretion, may adjust the amount of a subsequent installment payment or a payment delayed for any other reason to reflect increases or decreases in the Consumer Price Index.

The unpaid balance of all remaining installments shall become due immediately if (i) the responsible party fails to pay any installment in a timely manner, as specified in Board regulations, (ii) there is a liquidation or sale of substantially all the assets of the responsible party, or (iii) the responsible party ceases to do business.

In the case of a sale of substantially all the assets of a responsible party, the remaining installments shall not become due immediately if the buyer enters into an agreement with the Department under which the buyer assumes liability for the remaining installments due under this subsection in the same manner as if the buyer were the responsible party.

I. A responsible party aggrieved by the issuance of a notice of cost recovery demand shall exhaust administrative remedies by filing a request for reconsideration with the Department within 30 days following issuance of the notice of cost recovery demand. A request for reconsideration shall state the grounds for the request and include supporting documentation. The Department shall notify the responsible party of the final decision by issuing a final notice of cost recovery demand. A responsible party aggrieved by the issuance of a final notice of cost recovery demand may bring an action in the Circuit Court of the City of Richmond.

J. Nothing in this section shall be construed to supersede or diminish in any way any other remedies available to a person.

§ 10.1-1032. State treasurer report on the cost to the Commonwealth of covered greenhouse gas emissions.

On or before January 15, 2026, the State Treasurer, after consultation with the Department, and with any other person or entity whom the State Treasurer decides to consult for the purpose of obtaining and utilizing credible data or methodologies that the State Treasurer determines may aid the State Treasurer in making the assessments and estimates required by this section, shall submit to the Governor and the General Assembly an assessment of the cost to the Commonwealth and its residents of the emission of covered greenhouse gases for the period that began on January 1, 1995, and ended on December 31, 2024. The assessment shall include:

1. A summary of the various cost-driving effects of covered greenhouse gas emissions on the Commonwealth, including effects on public health, natural resources, biodiversity, agriculture, economic development, flood preparedness and safety, housing, and any other effect that the State Treasurer, in consultation with the Department, determines is relevant;

2. A categorized calculation of the costs that have been incurred and are projected to be incurred in the future within the Commonwealth of each of the effects identified under subdivision 1; and

3. A categorized calculation of the costs that have been incurred and are projected to be incurred in the future within the Commonwealth to abate the effects of covered greenhouse gas emissions from between January 1, 1995, and December 31, 2024, on the Commonwealth and its residents.

§ 10.1-1033. Regulations.

The Board shall adopt regulations necessary to implement the provisions of this chapter. Such regulations shall include (i) methodologies using available science and publicly available data to identify responsible parties and determine their applicable share of covered greenhouse gas emissions and (ii) requirements for registering entities that are responsible parties and issuing notices of cost recovery demands under the Program.

§ 10.1-1034. Annual audit.

The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the accounts of the Fund, and the cost of such audit services as shall be required shall be borne by the Fund. The audit shall be performed at least each fiscal year, in accordance with generally accepted auditing standards and, accordingly, include such tests of the accounting records and such auditing procedures as are considered necessary under the circumstances. The Department shall furnish copies of such audit to the Governor and the General Assembly.