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By: **Delegates Hubbard, Anderson, Barkley, Benson, Bobo, Branch, Bronrott, Brown, Burns, Cane, Cardin, Carter, V. Clagett, Conroy, Cryor, C. Davis, Doory, Dumais, Feldman, Franchot, Frush, Gaines, Goldwater, Goodwin, Griffith, Gutierrez, Hammen, Harrison, Haynes, Healey, Heller, Hixson, Holmes, Howard, Jones, Kaiser, Kelley, King, Kirk, Krysiak, Kullen, Lawton, Lee, Madaleno, Malone, Mandel, Marriott, McHale, McIntosh, Menes, Moe, Montgomery, Morhaim, Murray, Nathan-Pulliam, Niemann, Oaks, Paige, Parker, Patterson, Pendergrass, Petzold, Proctor, Pugh, Quinter, Ramirez, Rosenberg, Ross, Simmons, Stern, Taylor, F. Turner, V. Turner, Vallario, Vaughn, Weir, and Zirkin**

Introduced and read first time: January 19, 2006

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Healthy Air Act**

3 FOR the purpose of establishing certain limits on the emissions of oxides of nitrogen,  
4 sulfur dioxide, mercury, and carbon dioxide from certain facilities by certain  
5 dates; requiring the Department of the Environment to set certain emissions  
6 budgets; requiring the Governor to include the State in the Regional  
7 Greenhouse Gas Initiative or, the alternative, requiring the Department to  
8 adopt certain regulations to reduce carbon dioxide emissions from affected  
9 facilities; providing for the application of this Act; authorizing affected facilities  
10 to determine the best method of compliance with requirements of this Act;  
11 requiring the Department to treat certain allowances allocated by the U.S.  
12 Environmental Protection Agency to the State in a certain manner; requiring  
13 certain facilities to submit, to the Department, the Department of Natural  
14 Resources, and the Public Service Commission, a certain compliance report by a  
15 certain date; requiring the Department to review certain information received in  
16 accordance with this Act; requiring the Department to adopt certain regulations;  
17 providing for criminal and civil penalties for a violation of this Act; establishing  
18 a Maryland Carbon Reduction Fund in the Maryland Energy Administration;  
19 providing for the operation and maintenance of the Fund; providing that the  
20 Fund consists of certain fines and penalties, certain proceeds, and certain other  
21 money; defining certain terms; and generally relating to the emissions of four  
22 pollutants from power plants.

23 BY adding to

24 Article - Environment

1 Section 2-1001 through 2-1005, inclusive, to be under the new subtitle "Subtitle  
2 10. Healthy Air Act"  
3 Annotated Code of Maryland  
4 (1996 Replacement Volume and 2005 Supplement)

5 BY adding to  
6 Article - State Government  
7 Section 9-2009  
8 Annotated Code of Maryland  
9 (2004 Replacement Volume and 2005 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article - Environment**

13 **SUBTITLE 10. HEALTHY AIR ACT.**

14 2-1001.

15 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
16 INDICATED.

17 (B) (1) "AFFECTED FACILITY" MEANS AN ELECTRICITY GENERATING UNIT  
18 IN THE STATE THAT INCLUDES A FOSSIL FUEL FIRED BOILER OR INDIRECT HEAT  
19 EXCHANGER THAT WAS EXEMPTED FROM THE PREVENTION OF SIGNIFICANT  
20 DETERIORATION REVIEW UNDER TITLE 1 OF THE 1977 FEDERAL CLEAN AIR ACT.

21 (2) "AFFECTED FACILITY" INCLUDES:

22 (I) H.A. WAGNER, UNITS 2 AND 3;

23 (II) R.P. SMITH, UNITS 3 AND 4;

24 (III) MORGANTOWN GENERATING STATION, UNITS 1 AND 2;

25 (IV) DICKERSON, UNITS 1, 2, AND 3;

26 (V) C.P. CRANE, UNITS 1 AND 2;

27 (VI) CHALK POINT GENERATING STATION, UNITS 1 AND 2; AND

28 (VII) BRANDON SHORES, UNITS 1 AND 2.

29 (3) "AFFECTED FACILITY" DOES NOT INCLUDE ANY ELECTRICITY  
30 GENERATING UNIT:

1 (I) THAT OPERATES IN COMBINATION WITH EQUIPMENT USED TO  
2 RECOVER USEFUL THERMAL ENERGY FOR INDUSTRIAL, COMMERCIAL, HEATING, OR  
3 COOLING PURPOSES THROUGH SEQUENTIAL USE OF ENERGY; OR

4 (II) THAT SUPPLIES IN ANY CALENDAR YEAR LESS THAN  
5 ONE-HALF OF THE ELECTRICITY GENERATED BY SUCH UNIT TO ANY UTILITY POWER  
6 DISTRIBUTION SYSTEM FOR SALE.

7 (C) "INLET MERCURY" MEANS THE AVERAGE CONCENTRATION OF MERCURY  
8 IN FLUE GAS AT THE INLET OF THE EMISSION CONTROL DEVICE IMMEDIATELY  
9 DOWNSTREAM OF THE BOILER OF AN ELECTRICITY GENERATING UNIT, AS  
10 DETERMINED BY METHODS PRESCRIBED BY THE DEPARTMENT.

11 (D) "LOAD-SERVING ENTITY" MEANS AN ELECTRIC COMPANY, MUNICIPAL  
12 CORPORATION, OR COOPERATIVE SERVING ELECTRICITY CUSTOMERS IN MARYLAND.

13 (E) "PJM REGION" HAS THE MEANING STATED UNDER § 7-701 OF THE PUBLIC  
14 UTILITY COMPANIES ARTICLE.

15 2-1002.

16 (A) ON OR AFTER JANUARY 1, 2010, THERE IS AN ANNUAL CEILING ON THE  
17 TOTAL AMOUNT OF OXIDES OF NITROGEN AND SULFUR DIOXIDE EMISSIONS FROM  
18 AFFECTED FACILITIES AS FOLLOWS:

19 (1) 21,303 TONS OF OXIDES OF NITROGEN; AND

20 (2) 39,925 TONS OF SULFUR DIOXIDE.

21 (B) ON OR AFTER JANUARY 1, 2015, THE ANNUAL CEILING ON THE TOTAL  
22 AMOUNT OF OXIDES OF NITROGEN AND SULFUR DIOXIDE EMISSIONS FROM  
23 AFFECTED FACILITIES SHALL BE REDUCED TO:

24 (1) 13,339 TONS OF OXIDES OF NITROGEN; AND

25 (2) 24,645 TONS OF SULFUR DIOXIDE.

26 (C) THE DEPARTMENT SHALL SET EMISSIONS BUDGETS FOR EACH AFFECTED  
27 FACILITY TO IMPLEMENT THE EMISSIONS LIMITATIONS IN SUBSECTIONS (A) AND (B)  
28 OF THIS SECTION.

29 (D) ON OR AFTER JANUARY 1, 2010, A PERSON THAT OWNS, LEASES,  
30 OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL:

31 (1) ACHIEVE A MINIMUM 90% CAPTURE OF INLET MERCURY FOR EACH  
32 AFFECTED FACILITY, CALCULATED AS A ROLLING 12-MONTH AVERAGE; AND

33 (2) DEMONSTRATE COMPLIANCE WITH PARAGRAPH (1) OF THIS  
34 SUBSECTION THROUGH THE DIRECT MONITORING OF MERCURY EMISSIONS ON A  
35 CONTINUOUS BASIS, ACCORDING TO THE REQUIREMENTS OF 40 C.F.R. PART 60,  
36 60.49A(P), 60.4170-60.4176, AND 40 C.F.R. PART 75, SUBPART I.

1 (E) NOT LATER THAN JUNE 30, 2007:

2 (1) THE GOVERNOR SHALL INCLUDE THE STATE AS A FULL  
3 PARTICIPANT IN THE REGIONAL GREENHOUSE GAS INITIATIVE AMONG  
4 MID-ATLANTIC AND NORTHEAST STATES; OR

5 (2) THE DEPARTMENT SHALL ADOPT REGULATIONS TO REQUIRE A 10%  
6 REDUCTION OF CARBON DIOXIDE EMISSIONS FROM AFFECTED FACILITIES BY 2018,  
7 THROUGH AN IN-STATE SYSTEM FOR TRADING AND TRACKING CARBON DIOXIDE  
8 EMISSIONS IN ACCORDANCE WITH SUBSECTION (F) OF THIS SECTION.

9 (F) AS PART OF THE SYSTEM REQUIRED UNDER SUBSECTION (E)(2) OF THIS  
10 SECTION, THE DEPARTMENT SHALL:

11 (1) CREATE A BASELINE EMISSION LEVEL BY ESTABLISHING  
12 ALLOWANCES FOR THE EMISSION OF CARBON DIOXIDE EQUIVALENT TO THE 2004  
13 CARBON DIOXIDE EMISSIONS OF THE AFFECTED FACILITIES AS FOLLOWS:

14 (I) THE DEPARTMENT SHALL GRANT UP TO 75% OF THE  
15 ALLOWANCES TO THE OWNERS OF THE AFFECTED FACILITIES IN PROPORTION TO  
16 THEIR 2004 EMISSIONS;

17 (II) THE DEPARTMENT SHALL AUCTION AT LEAST 25% OF THE  
18 ALLOWANCES, WITH THE PROCEEDS DEPOSITED IN THE MARYLAND CARBON  
19 REDUCTION FUND ESTABLISHED UNDER § 9-2009 OF THE STATE GOVERNMENT  
20 ARTICLE;

21 (III) EFFECTIVE JANUARY 1, 2009, A PERSON THAT OWNS, LEASES,  
22 OPERATES, OR CONTROLS AN AFFECTED FACILITY MAY NOT EMIT MORE CARBON  
23 DIOXIDE THAN THE TOTAL ALLOWANCES HELD BY THE PERSON;

24 (IV) EFFECTIVE JANUARY 1, 2015, THE NUMBER OF TONS OF  
25 CARBON DIOXIDE REPRESENTED BY EACH ALLOWANCE SHALL BE REDUCED BY 2.5%  
26 PER YEAR, SUCH THAT EACH ALLOWANCE IN 2018 WILL REPRESENT 10% LESS THAN  
27 EACH ALLOWANCE IN 2014;

28 (V) FOR THE PURPOSES OF THIS SUBSECTION, CARBON DIOXIDE  
29 EMISSIONS SHALL BE CALCULATED USING FUEL USE DATA AS REPORTED ON FORM  
30 906, SUBMITTED TO THE U.S. ENERGY INFORMATION ADMINISTRATION; AND

31 (VI) UP TO 3.3% OF THE EMISSIONS OF CARBON DIOXIDE OF AN  
32 AFFECTED FACILITY MAY BE OFFSET BY CREDITS OBTAINED FROM ANY SPONSOR OF  
33 AN EMISSIONS REDUCTION OR CARBON SEQUESTRATION PROJECT THAT IS FOUND  
34 BY THE SECRETARY TO MEET ALL APPLICABLE CRITERIA FOR SUCH PROJECTS IN  
35 ACCORDANCE WITH THE REGIONAL GREENHOUSE GAS INITIATIVE; AND

36 (2) ESTABLISH A SYSTEM FOR OFFSETTING THE CARBON DIOXIDE  
37 EMISSIONS OF STATEWIDE ELECTRICITY IMPORTS ABOVE THE AMOUNT OF  
38 ELECTRICITY IMPORTED IN 2004 AS FOLLOWS:

1 (I) A LOAD-SERVING ENTITY IN THE STATE THAT CONTRACTS TO  
2 PURCHASE ELECTRIC POWER GENERATED IN A STATE OTHER THAN MARYLAND OR  
3 STATES PARTICIPATING IN THE REGIONAL GREENHOUSE GAS INITIATIVE IN ORDER  
4 TO REPLACE ELECTRIC POWER FORMERLY PURCHASED FROM AN AFFECTED  
5 FACILITY, SHALL OFFSET THE CARBON DIOXIDE EMISSIONS OF THAT POWER; AND

6 (II) THE AMOUNT OF CARBON DIOXIDE EMISSIONS ATTRIBUTED TO  
7 POWER GENERATED IN A STATE OTHER THAN MARYLAND OR A STATE  
8 PARTICIPATING IN THE REGIONAL GREENHOUSE GAS INITIATIVE SHALL BE  
9 CALCULATED ACCORDING TO THE AVERAGE CARBON DIOXIDE EMISSIONS OF THE  
10 ELECTRICITY GENERATED BY THE PERSON SELLING THE POWER IN THE REGION IN  
11 WHICH SUCH POWER IS GENERATED.

12 (G) THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED TO AFFECT  
13 EMISSIONS REQUIREMENTS, STANDARDS, OR LIMITATIONS IMPOSED ON  
14 ELECTRICITY GENERATORS BY ANY OTHER PROVISION OF LAW THAT WOULD  
15 RESULT IN EMISSIONS REDUCTIONS IN ADDITION TO THOSE REQUIRED UNDER THIS  
16 SECTION.

17 (H) A PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED  
18 FACILITY THAT IS SUBJECT TO THE REQUIREMENTS OF THIS SECTION MAY  
19 DETERMINE HOW BEST TO ACHIEVE THE COLLECTIVE EMISSIONS REQUIREMENTS  
20 UNDER SUBSECTIONS (A), (B), AND (E) OF THIS SECTION.

21 (I) IF THE U.S. ENVIRONMENTAL PROTECTION AGENCY ALLOCATES  
22 EMISSION ALLOWANCES FOR MERCURY, SULFUR DIOXIDE, OR OXIDES OF NITROGEN  
23 TO THE STATE, THE ALLOWANCES SHALL BE TREATED AS FOLLOWS:

24 (1) A MERCURY ALLOWANCE MAY NOT BE ALLOCATED TO ANY PERSON  
25 THAT OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY OR OTHER  
26 SOURCE OF MERCURY EMISSIONS INTO THE ATMOSPHERE OR MERCURY  
27 DISCHARGES INTO THE WATERS OF THE STATE.

28 (2) (I) THE DEPARTMENT SHALL HOLD ALL MERCURY ALLOWANCES  
29 ALLOCATED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO THE STATE.

30 (II) AT THE END OF EACH CALENDAR YEAR, THE DEPARTMENT  
31 SHALL INSTRUCT THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO RETIRE  
32 PERMANENTLY THE ALLOWANCES.

33 (3) THE DEPARTMENT SHALL ENSURE THAT ANY EMISSION  
34 ALLOWANCES FOR SULFUR DIOXIDE OR OXIDES OF NITROGEN ALLOCATED BY THE  
35 DEPARTMENT TO ANY PERSON THAT OWNS, LEASES, OPERATES, OR CONTROLS AN  
36 AFFECTED FACILITY MAY NOT BE MADE AVAILABLE FOR RESALE OR EXCHANGE.

37 2-1003.

38 (A) BEGINNING DECEMBER 1, 2007, AND EACH YEAR THEREAFTER, A PERSON  
39 WHO OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL

1 SUBMIT TO THE DEPARTMENT, THE DEPARTMENT OF NATURAL RESOURCES, AND  
2 THE PUBLIC SERVICE COMMISSION, A REPORT THAT INCLUDES:

3 (1) EMISSIONS PERFORMANCE RESULTS RELATED TO COMPLIANCE  
4 WITH THE EMISSIONS REQUIREMENTS UNDER § 2-1002 OF THIS SUBTITLE;

5 (2) THE NUMBER OF POUNDS OF OXIDES OF NITROGEN, SULFUR  
6 DIOXIDE, MERCURY, AND CARBON DIOXIDE EMITTED DURING THE PREVIOUS  
7 CALENDAR YEAR FROM THE AFFECTED FACILITY;

8 (3) A CURRENT COMPLIANCE PLAN; AND

9 (4) ANY OTHER INFORMATION REQUESTED BY THE DEPARTMENT.

10 (B) THE DEPARTMENT SHALL REVIEW THE INFORMATION SUBMITTED UNDER  
11 THIS SECTION TO DETERMINE WHETHER THE ACTUAL AND PROPOSED  
12 MODIFICATIONS AND PERMIT AND CONSTRUCTION SCHEDULES ARE ADEQUATE TO  
13 ACHIEVE THE EMISSIONS REQUIREMENTS UNDER THIS SUBTITLE AND SHALL MAKE  
14 THESE DETERMINATIONS PUBLICLY AVAILABLE ON AN ANNUAL BASIS.

15 2-1004.

16 BY JUNE 30, 2007, THE DEPARTMENT SHALL ADOPT REGULATIONS TO  
17 IMPLEMENT THE PROVISIONS OF THIS SUBTITLE.

18 2-1005.

19 (A) THE CRIMINAL PENALTY PROVISIONS OF THIS SECTION ARE IN ADDITION  
20 TO THE CIVIL PENALTY PROVISIONS PROVIDED UNDER § 2-610 OF THIS TITLE.

21 (B) (1) A PERSON MAY NOT KNOWINGLY ACT OR FAIL TO ACT IN VIOLATION  
22 OF THE PROVISIONS OF THIS SUBTITLE OR THE REGULATIONS ADOPTED UNDER  
23 THIS SUBTITLE.

24 (2) A PERSON WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION IS  
25 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

26 (I) FOR A FIRST OFFENSE, A FINE NOT EXCEEDING \$25,000 OR  
27 IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH; OR

28 (II) FOR A VIOLATION COMMITTED AFTER A FIRST CONVICTION  
29 UNDER THIS SECTION, A FINE NOT EXCEEDING \$50,000 OR IMPRISONMENT NOT  
30 EXCEEDING 2 YEARS OR BOTH.

31 (3) EACH DAY ON WHICH A VIOLATION OCCURS IS A SEPARATE  
32 VIOLATION UNDER THIS SUBSECTION.

33 (C) A CRIMINAL PROSECUTION FOR A VIOLATION BROUGHT UNDER THIS  
34 SECTION SHALL BE INSTITUTED WITHIN 3 YEARS AFTER THE VIOLATION WAS  
35 COMMITTED.

1 **Article - State Government**

2 9-2009.

3 (A) THERE IS A MARYLAND CARBON REDUCTION FUND ADMINISTERED BY  
4 THE ADMINISTRATION.5 (B) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO §  
6 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.7 (C) THE TREASURER SHALL HOLD THE FUND SEPARATELY AND THE  
8 COMPTROLLER SHALL ACCOUNT FOR THE FUND.

9 (D) THE FUND CONSISTS OF:

10 (1) PROCEEDS FROM THE SALE OF ALLOWANCES UNDER § 2-1002(E)(2)  
11 OF THE ENVIRONMENT ARTICLE;12 (2) CRIMINAL FINES AND CIVIL PENALTIES IMPOSED UNDER TITLE 2,  
13 SUBTITLE 10 OF THE ENVIRONMENT ARTICLE;

14 (3) MONEY APPROPRIATED IN THE STATE BUDGET TO THE FUND; AND

15 (4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE  
16 BENEFIT OF THE FUND.

17 (E) THE FUND MAY BE USED ONLY:

18 (1) TO IMPLEMENT STANDARDS AND TO PROVIDE INCENTIVES TO  
19 CONSUMERS SO THAT ENERGY EFFICIENT PRODUCTS AND SERVICES THAT ARE NOT  
20 BROADLY AVAILABLE AND USED BY STATE CONSUMERS BECOME STANDARD  
21 PRODUCT OFFERINGS;22 (2) TO CAPTURE OPPORTUNITIES OTHERWISE LOST FOR  
23 COST-EFFECTIVE ENERGY EFFICIENT DESIGNS, MATERIALS, AND EQUIPMENT  
24 WHEN HOMES AND BUILDINGS ARE BUILT, REMODELED, OR RENOVATED, AND WHEN  
25 EQUIPMENT IS REPLACED;26 (3) TO REDUCE PEAK DEMAND FOR ELECTRICITY AND IMPROVE  
27 SERVICE RELIABILITY FOR ALL CUSTOMERS THROUGH ENERGY EFFICIENCY  
28 MEASURES THAT ARE ESPECIALLY EFFECTIVE AT REDUCING PEAK SYSTEM  
29 DEMANDS; AND30 (4) TO ENSURE THAT LOW-INCOME CUSTOMERS CAN FULLY  
31 PARTICIPATE IN OPPORTUNITIES TO SAVE ELECTRICITY AND REDUCE THEIR  
32 ELECTRICITY COSTS.33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
34 July 1, 2006.