Climate Law & Policy Project

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Testimony Concerning Climate Crisis and Education Act (SB0912)
Position: Support with Amendment
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Since October 2017, Climate Law & Policy Project has worked with ClimateXChange to develop and advance a carbon fee, rebate & invest bill in Maryland, culminating this year in the Climate Crisis and Education Act (CCEA). We strongly support carbon fee, rebate & investment strategies, and we support the Climate Crisis and Education Act. However, we recommend deleting § 2–1219(D)(4). If this provision is not deleted, we recommend amending § 2–1220(C) and § 2–1223(B)(2) of the act, as explained below.

§ 2–1219(D)(4)

This provision prohibits fees collected from being passed through to end users of fossil fuels or customers of electric or gas companies, with the exception of electricity or gas fees approved by the Public Service Commission as prudently incurred costs of distribution. Thus, suppliers of transportation fuels and some heating fuels are completely barred from passing the fee along to their customers. We think this will diminish the effectiveness of the fee, as it eliminates the incentive for customers to reduce their emissions, for example, by purchasing low- or zero-emission vehicles.

Furthermore, it appears the fee could make the sale of the fuels in Maryland unprofitable for these companies, which could give rise to a "taking" lawsuit. While we cannot predict the outcome of such a suit, it is possible that, were a court to find that the fee is a taking, it could strike down the entire law.

For these reasons, we recommend § 2–1219(D)(4) be deleted.

§ 2–1220(C)

If § 2–1219(D)(4) is not deleted, we recommend § 2–1220(C) be amended as follows:

2-1220(C). THE AMOUNT DISTRIBUTED EACH YEAR TO THE BENEFIT FUND SHALL BE THE LESSER OF:

(1) 50% OF THE REVENUES GENERATED BY FEES PASSED THROUGH TO ELECTRICITY CUSTOMERS OR END USERS OF FOSSIL FUELS, AS DETERMINED BY THE SECRETARY; OR

(2) ALL THE REVENUES REMAINING AFTER THE DISTRIBUTION TO THE KIRWAN FUND UNDER SUBSECTION (B) OF THIS SECTION.

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If § 2–1219(D)(4) is not deleted from the bill, more robust investment in mitigation measures will be needed to compensate for the diminished effectiveness of the fee due to its not being fully passed through to consumers. If the fraction of revenue distributed to the Benefits Fund exceeds the fraction of fees passed through to consumers, there will be insufficient money in the Infrastructure Fund to provide adequate investment in clean energy and transportation, resilient infrastructure, soil, forest and wetland sequestration, and just transition, as called for in § 2–1223(B). We estimate that without this amendment the amount of money that will go to the Infrastructure Fund from 2021 to 2030 could be as low as 6% of total revenue. The low amount of available investment revenue is due to two factors: (1) excessive benefits, and (2) carveouts for RGGI and TCI.

Excessive Benefits

CLPP believes it is crucial to protect low- and middle-income households and energy-intensive, trade-exposed businesses from economic harm caused by carbon fees. However, § 2–1219(D)(4) prevents some or all fees from being passed through as a direct cost to end users of fossil fuels and customers of electricity and gas companies. Thus, it is not certain that these entities would suffer any economic harm from fees, and if they do, that the extent of harm would be proportional to the benefits they receive. In other words, § 2–1220(C) as currently written goes beyond its protective aim, providing full benefits to households and employers regardless of the amount they actually paid in fees. The amendment we propose would distribute 50% of revenue generated only by fees *passed through to electricity customers or end users of fossil fuels*, making benefits proportional to fees paid. This would more than protect the lowest-income quintile from any adverse impact; they either would pay no fees or would come out ahead, receiving more benefits than they paid in fees, preserving the original intent of the benefits provision.

Carveouts for RGGI and TCI

To prevent fossil fuel and electricity suppliers from being charged twice for the same emissions, CCEA provides “carveouts” for the Regional Greenhouse Gas Initiative (RGGI) and the Transportation and Climate Initiative (TCI). Fees charged under CCEA are reduced by any amounts paid for allowances under these two programs. It is difficult to estimate how much this will reduce CCEA revenue, but Maryland Department of the Environment projects that Maryland will collect $446 million more in RGGI revenue in the next decade than it collected in the prior one. That would suggest average Maryland RGGI revenue of around $100 million per year through 2030. TCI revenue is more difficult to predict, as the program is not yet operating, and significant parameters, including stringency of targets, have not yet been agreed on. If the most stringent target under consideration — 25% reduction in transportation emissions by 2030 — is adopted, virtually all revenue from the transportation fuels component of CCEA will be eliminated. We estimate, based on the 70% by 2030 reduction target in the CCEA, these two carveouts could reduce average revenue to the Infrastructure Fund by more than $300 million per year.

Importance of Investment.

Investment of carbon price revenues is very important for a range of reasons. For example, there are some needed emission reductions that a carbon price signal will be unable to reach (e.g., some energy efficiency measures), and there are sectors where a carbon price alone is expected to be inadequate to spur change (e.g., transportation). Carbon price revenues could help fund other types of solutions, as well as 'just transition' and resilience measures. In addition, numerous polls show public support for carbon pricing is highest when the revenues are used to further the core purpose of the carbon price, such as by investing the revenue in clean energy technologies.

There are many examples of carbon pricing programs that allocate a substantial amount of revenue to investment, mainly in additional GHG emission abatement. RGGI is an obvious example, with most proceeds invested in energy efficiency, renewable energy, and other greenhouse gas abatement, and it looks like TCI will adopt a similar approach. Proceeds from California's cap-and-trade auctions likewise go into a Greenhouse Gas Reduction Fund that invests in transportation and sustainable communities, clean energy and energy efficiency, and natural resources and waste diversion. Similarly, revenues from Quebec's cap-and-trade program go into a Green Fund for climate mitigation and adaptation projects. Carbon price revenues in Japan, Switzerland, and elsewhere are invested in a similar fashion. Analysis of these investment measures has shown that in many cases they have had more impact on emissions than the price itself.

Benefits to Low- and Moderate-Income Residents Provided by the Infrastructure Fund

§ 2–1223(B)(2) provides: "Of the money in the infrastructure fund, 30% shall be used to benefit low– and moderate–income residents, with priority given to historically pollution–burdened and underserved communities, including by providing access to affordable renewable energy, energy efficiency, public transportation, and assistance with adapting to impacts of severe weather and climate change."

This provision could offer substantial economic benefits to low- and moderate-income households while simultaneously reducing statewide emissions. Examples of such benefits include low-cost or free solar roofs, energy efficiency upgrades, access to community-based solar, public transit passes, etc. We are not suggesting that rebates should be entirely replaced by Infrastructure Fund benefits. We are simply making the point that the Infrastructure Fund can provide financial benefits as well, while also achieving reductions in emissions. Ideally, low- and moderate-income households could be held harmless from fees by the Benefits Fund *and* be provided with low- or zero-cost access to clean energy and transportation opportunities of which they have long been deprived.

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The Infrastructure Fund can also benefit historically pollution-burdened and underserved communities by investing in actions that directly reduce co-pollutants, including volatile organic compounds, particulates, and heavy metals. Such actions could include replacing diesel buses with electric ones and accelerating the closure of coal-fired power plants by, for example, funding 'just transition' for fossil-fuel dependent workers and communities. Maryland communities experience some of the highest rates of asthma and pollution-induced mortality in the country.

Low- and moderate-income communities in Maryland are also among the most vulnerable to impacts of climate change, whereas wealthier communities are more likely to have the means to protect themselves. A good example of the plight Maryland's low- and moderate-income neighborhoods will face can be found in Boston, as reported in the Washington Post (Feb. 19) article, "*Retreat or adapt: A city that flourished by the ocean is now preparing for rising seas*." According to this article, new buildings in Boston are being built higher than state code requires, while older residential buildings occupied by lower-income people lack the money to alter their topography. These are precisely the types of problems the Infrastructure Fund could help address.

§ 2–1223(B)(2)

To compensate for any reduction in benefits to low- and moderate-income households that might occur if our recommendation to amend § 2–1220(C) is adopted, we recommend amending § 2–1223(B)(2) to increase the amount of money in the Infrastructure Fund used to benefit low- and moderate-income residents from 30% to 50%.