

CAROL L. KRIMM  
Legislative District 3A  
Frederick County



The Maryland House of Delegates  
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Appropriations Committee  
Oversight Committee on Pensions  
Transportation and the Environment  
Subcommittee  
Joint Committee on Ending  
Homelessness  
Joint Committee on Pensions

THE MARYLAND HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401

**HB 395 – MARYLAND STRATEGIC ENERGY INVESTMENT FUND – REGIONAL GREENHOUSE  
GAS INITIATIVE – USE OF PROCEEDS FOR MARYLAND HEALTHY SOILS PROGRAM**

**HOUSE ECONOMIC MATTERS COMMITTEE**

**February 20, 2020**

**Delegate Carol L. Krimm**

HB 395 provides for the Maryland Healthy Soils Program through the Maryland Department of Agriculture (MDA) be added to programs that may be funded through the Maryland Strategic Energy Investment Fund (SEIF). According to statute, at least 20% of the fund shall be credited to a renewable and clean energy program. The bill would add the Maryland Healthy Soils Program established under the Agriculture Article to this section and authorize the greater of 10% or \$1,000,000 be allocated to this program.

The Healthy Soils Program was established with the passage of HB 1063 in 2017. Among its purposes was to "(P)rovide incentives, including research education, technical assistance, and, **subject to available funding**, financial assistance, to farmers to implement farm management practices that contribute to healthy soils." MDA indicates in the fiscal note there are currently no State funds allocated to the program. If the bill passes and the funding is made available, MDA states that it expects to use the significant majority of funding to provide financial assistance to farmers to further the adoption of healthy soil practices. The Attorney General has provided an opinion that the Healthy Soils Program is an acceptable use of funds. The AG letter is in your packet.

Funding for the Strategic Energy Investment Fund( SEIF) results from the Regional Greenhouse Gas Initiative (RGGI) auction of carbon allowances. According to the DLS policy analyst, the fiscal 2019 closing balance for the fund that provides the funding for this bill is \$14.9 million. The projected fiscal 2021 balance is \$3.9 million under the Governor's Plan or \$6.0 million under current law. Both projections understate the balance that will actually be available since the revenue forecasting is intentionally at the lowest revenue levels.

The bill does not mandate new revenue but adds this program for use of funds to farming for carbon sequestration. It is important we continue to maximize revenues to assist with activities that reverse the effects of climate change.

BRIAN E. FROSH  
ATTORNEY GENERAL

ELIZABETH F. HARRIS  
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI  
DEPUTY ATTORNEY GENERAL



SANDRA BENSON BRANTLEY  
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JEREMY M. MCCOY  
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER  
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

January 10, 2020

The Honorable Carol L. Krimm  
Maryland House of Delegates  
422 House Office Building  
Annapolis, Maryland 21401

Dear Delegate Krimm:

You have asked whether State proceeds from the sale of allowances under the Regional Greenhouse Gas Initiative ("RGGI") may be used to fund carbon capture programs, the Maryland Healthy Soils Program, and regenerative agriculture programs. Specifically, you have asked whether such programs qualify as "climate change" programs under State Government Article ("SG"), § 9-20B-05(g)(3).

In my view, the programs you have identified, as described below, qualify as "climate change" programs under SG § 9-20B-05(g)(3). Accordingly, a portion of RGGI proceeds may be used to fund those programs, subject to the State budget process.

State law provides that proceeds from the sale of RGGI allowances ("RGGI proceeds") are to be deposited in the Maryland Strategic Energy Investment Fund ("SEIF"). Environment Article, § 2-1002(g)(5). SEIF's governing statute, SG § 9-20B-05, sets forth the various purposes for which money in SEIF may be used. One of those purposes is to "invest in the promotion, development, and implementation of ... climate change programs directly related to reducing or mitigating the effects of climate change." SG § 9-20B-05(f)(1)(iii).

As to the RGGI proceeds deposited into SEIF,<sup>1</sup> SG § 9-20B-05(g) governs how those funds shall be allocated. Among the required allocations, at least 20% of RGGI proceeds shall be credited to a renewable and clean energy programs account for (1) renewable and clean energy programs and initiatives; (2) energy-related public education and outreach; and (3) "climate change and resiliency programs." SG § 9-20B-05(g)(3).

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<sup>1</sup> In addition to RGGI proceeds, other funds, including compliance fees paid by electric suppliers under the State's Renewable Energy Portfolio Standard Program, are deposited into SEIF. SG § 9-20B-05(e).

### Carbon Capture

Carbon capture or carbon sequestration broadly refers to the practice of capturing and storing carbon dioxide that otherwise would be released into the atmosphere, with the goal of reducing global climate change.<sup>2</sup> Geologic carbon sequestration involves the storage of carbon dioxide in underground geologic formations. Biologic carbon sequestration involves the storage of carbon dioxide within biological systems, such as vegetation, soils, woody products, and aquatic environments.<sup>3</sup>

### Maryland Healthy Soils Program

The Maryland Healthy Soils Program was established by Ch. 373 *Laws of Maryland* 2017. The purpose of the Program is to encourage agricultural practices that improve the health, yield, and profitability of the soils of the State; increase biological activity and carbon sequestration in the soils of the State; and promote the widespread use of healthy soils among Maryland farmers. "Healthy soils," as defined in State law, refers to the continuing capacity of soil to function as a biological system, increase organic matter, improve soil structure and water and nutrient holding capacity, and "[s]equester carbon and reduce greenhouse gas emissions." Agriculture Article, § 2-1901. Research has identified management of soils on agricultural lands as "a key climate mitigation and adaptation strategy." *Kristin B. Byrd, et al.* 2019 *Environ. Res. Lett.* 14, 104001.<sup>4</sup>

### Regenerative Agriculture

There does not seem to be any generally-accepted definition of "regenerative agriculture"; however, it appears that the term commonly refers to farming practices aimed at improving soil diversity and increasing the capacity of soil to absorb carbon dioxide. *GreenBiz.com: The Fight to Define Regenerative Agriculture*, Jim Giles, April 24, 2019.<sup>5</sup>

It is my view that carbon capture programs, the Maryland Healthy Soils Program, and regenerative agriculture programs, as described above – all of which are aimed at reducing

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<sup>2</sup> [https://www.usgs.gov/faqs/what-carbon-sequestration?qt-news\\_science\\_products=0#qt-news\\_science\\_products](https://www.usgs.gov/faqs/what-carbon-sequestration?qt-news_science_products=0#qt-news_science_products)

<sup>3</sup> [https://www.usgs.gov/faqs/what-s-difference-between-geologic-and-biologic-carbon-sequestration?qt-news\\_science\\_products=0#qt-news\\_science\\_products](https://www.usgs.gov/faqs/what-s-difference-between-geologic-and-biologic-carbon-sequestration?qt-news_science_products=0#qt-news_science_products)

<sup>4</sup> Available at: <https://iopscience.iop.org/article/10.1088/1748-9326/ab3ca4>

<sup>5</sup> <https://www.greenbiz.com/article/fight-define-regenerative-agriculture>

The Honorable Carol L. Krimm  
January 10, 2020  
Page 3

atmospheric carbon dioxide – would qualify as “climate change” programs for which RGGI proceeds may be used pursuant to SG § 9-20B-05(g)(3).

Sincerely,

A handwritten signature in dark ink, appearing to read "David W. Stamper", with a long horizontal flourish extending to the right.

David W. Stamper  
Assistant Attorney General



## MARYLAND DEPARTMENT OF THE ENVIRONMENT

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### RGGI FACTS

- **What does the program do:** The program will require electric power generators in participating states to reduce CO<sub>2</sub> emissions. CO<sub>2</sub> is a major contributor to climate change. The RGGI states, including Maryland, are vulnerable to climate change impacts such as sea-level rise, increased intensity and frequency of storms, and extreme droughts and heat waves.
- **Who and what will be affected, when:** The RGGI program will start in 2009 and include coal-fired, oil-fired, and gas-fired electric generating units that are located in the RGGI region and have a capacity of at least 25 megawatts. In 2009, emissions in the RGGI region will be capped at 188 million tons (37.5 million tons in Maryland), or in other words, CO<sub>2</sub> emissions from affected sources will not be allowed to exceed 188 million tons. This cap will remain in place until 2015. Then, from 2015 to 2019, emissions will be reduced a total of 10%, 2.5% per year, from this base cap.
- **How does a CO<sub>2</sub> cap and trade program work:** A cap and trade program is an approach to reducing emissions of CO<sub>2</sub> in a region. The program establishes: (1) a limit on the total quantity of CO<sub>2</sub> that can be emitted into the atmosphere, and (2) a market-based system for purchasing emissions allowances.
- **What electricity generators will need to do:** Maryland generators included in the RGGI program will need to acquire, from auctions or directly from the Maryland Department of the Environment, one allowance (permit to emit CO<sub>2</sub>) for every ton of CO<sub>2</sub> that they emit.
- **How many emissions allowances will be auctioned or sold:** RGGI requires at least 25% of the allowances to be auctioned and the proceeds to be allocated to a public benefits fund. Maryland will auction 100% of the allowances allocated to its Consumer Energy Efficiency Account, equivalent to 85% of the 37,504,000 allowances allocated to Maryland. The Department, in its cap and trade rule, created a trigger mechanism for the first compliance period (first three years). If an auction clearing price reaches \$7, up to 50% of a year's allowances will be reserved for purchase by the Maryland generators at \$7 per allowance. This allows generators an option to purchase allowances from the Department, providing protection against high auction and secondary market allowance costs that could be passed on to ratepayers.
- **What are offsets and how can they be used:** The program will allow for offset allowances, or credits for greenhouse gas source reductions outside the cap, to be applied against an electricity generator's CO<sub>2</sub> emissions. Examples of offset projects include landfill gas capture and destruction, and tree planting. Priority will be given to in-state projects.
- **What is leakage and what is RGGI doing about it:** RGGI is addressing concerns about "leakage", the shifting of electricity generation from power plants in RGGI states to power plants in areas without caps on CO<sub>2</sub> emissions, such as Pennsylvania and states in the Midwest. States within the RGGI program, including Maryland, continue to analyze the impacts of leakage. They are also in the process of evaluating energy efficiency programs designed to reduce consumer demand for electricity, since reducing demand for electricity reduces the problem of leakage. In addition, the two regional independent system operators (ISOs) within the RGGI region and PJM, a regional electricity transmission organization covering Maryland and other states in the Mid-Atlantic and Midwest, are adding emissions and leakage tracking measures to their systems. This work will be completed by the end of 2008. A federal CO<sub>2</sub> emissions reduction program would decrease the problem of leakage in the RGGI region.

# **Strategic Energy Investment Fund (SEIF)**

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- Maryland Legislature granted administration of the Maryland RCGI revenues to the Maryland Energy Administration
  - Revenues are deposited in SEIF
- Maryland Legislature apportioned the revenue to a number of different uses
  - Low income bill payment
  - Low and moderate income energy efficiency
  - Rate payer relief
  - Renewable energy and climate programs
  - Administration of the program



## **Krimm, Carol Delegate (Laptop)**

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**From:** Zimmerman, Tonya  
**Sent:** Wednesday, February 19, 2020 10:03 AM  
**To:** Krimm, Carol Delegate (Laptop)  
**Subject:** RE: Question

The fiscal 2019 closing balance was \$14.9 million. The projected fiscal 2021 balance is \$3.9 million under the Governor's Plan or \$6.0 million under current law. However, both projections understate the balance that will actually be available since the revenue forecasting is intentionally at the lowest revenue levels.

Tonya Zimmerman  
Principal Policy Analyst  
Department of Legislative Services  
90 State Circle, Room 214-D  
Annapolis, MD 21401  
410-946-5530

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**From:** Krimm, Carol Delegate (Laptop)  
**Sent:** Wednesday, February 19, 2020 9:52 AM  
**To:** Zimmerman, Tonya <Tonya.Zimmerman@mlis.state.md.us>  
**Subject:** Question

Tonya - what is the balance for this year in the fund that my bill uses? Thanks

Sent from my Verizon, Samsung Galaxy smartphone