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By: **Senators Pinsky, Britt, Brochin, Conway, Della, Dyson, Exum,  
Forehand, Frosh, Garagiola, Giannetti, Gladden, Green, Grosfeld,  
Hughes, Jones, Kelley, Lawlah, McFadden, Ruben, Stone, and  
Teitelbaum**

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Assigned to: Education, Health, and Environmental Affairs

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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  
25 Section 2-1001 through 2-1005, inclusive, to be under the new subtitle "Subtitle  
26 10. Healthy Air Act"  
27 Annotated Code of Maryland  
28 (1996 Replacement Volume and 2005 Supplement)

29 BY adding to  
30 Article - State Government

1 Section 9-2009  
2 Annotated Code of Maryland  
3 (2004 Replacement Volume and 2005 Supplement)

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

6 **Article - Environment**

7 **SUBTITLE 10. HEALTHY AIR ACT.**

8 2-1001.

9 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
10 INDICATED.

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

15 (2) "AFFECTED FACILITY" INCLUDES:

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

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

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

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

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

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

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

23 (3) "AFFECTED FACILITY" DOES NOT INCLUDE ANY ELECTRICITY  
24 GENERATING UNIT:

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

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

31 (C) "INLET MERCURY" MEANS THE AVERAGE CONCENTRATION OF MERCURY  
32 IN FLUE GAS AT THE INLET OF THE EMISSION CONTROL DEVICE IMMEDIATELY

1 DOWNSTREAM OF THE BOILER OF AN ELECTRICITY GENERATING UNIT, AS  
2 DETERMINED BY METHODS PRESCRIBED BY THE DEPARTMENT.

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

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

7 2-1002.

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

11 (1) 21,303 TONS OF OXIDES OF NITROGEN; AND

12 (2) 39,925 TONS OF SULFUR DIOXIDE.

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

16 (1) 13,339 TONS OF OXIDES OF NITROGEN; AND

17 (2) 24,645 TONS OF SULFUR DIOXIDE.

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

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

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

25 (2) DEMONSTRATE COMPLIANCE WITH PARAGRAPH (1) OF THIS  
26 SUBSECTION THROUGH THE DIRECT MONITORING OF MERCURY EMISSIONS ON A  
27 CONTINUOUS BASIS, ACCORDING TO THE REQUIREMENTS OF 40 C.F.R. PART 60,  
28 60.49A(P), 60.4170-60.4176, AND 40 C.F.R. PART 75, SUBPART I.

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

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

33 (2) THE DEPARTMENT SHALL ADOPT REGULATIONS TO REQUIRE A 10%  
34 REDUCTION OF CARBON DIOXIDE EMISSIONS FROM AFFECTED FACILITIES BY 2018,

1 THROUGH AN IN-STATE SYSTEM FOR TRADING AND TRACKING CARBON DIOXIDE  
2 EMISSIONS IN ACCORDANCE WITH SUBSECTION (F) OF THIS SECTION.

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

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

8 (I) THE DEPARTMENT SHALL GRANT UP TO 75% OF THE  
9 ALLOWANCES TO THE OWNERS OF THE AFFECTED FACILITIES IN PROPORTION TO  
10 THEIR 2004 EMISSIONS;

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

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

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

22 (V) FOR THE PURPOSES OF THIS SUBSECTION, CARBON DIOXIDE  
23 EMISSIONS SHALL BE CALCULATED USING FUEL USE DATA AS REPORTED ON FORM  
24 906, SUBMITTED TO THE U.S. ENERGY INFORMATION ADMINISTRATION; AND

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

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

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

38 (II) THE AMOUNT OF CARBON DIOXIDE EMISSIONS ATTRIBUTED TO  
39 POWER GENERATED IN A STATE OTHER THAN MARYLAND OR A STATE

1 PARTICIPATING IN THE REGIONAL GREENHOUSE GAS INITIATIVE SHALL BE  
2 CALCULATED ACCORDING TO THE AVERAGE CARBON DIOXIDE EMISSIONS OF THE  
3 ELECTRICITY GENERATED BY THE PERSON SELLING THE POWER IN THE REGION IN  
4 WHICH SUCH POWER IS GENERATED.

5 (G) THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED TO AFFECT  
6 EMISSIONS REQUIREMENTS, STANDARDS, OR LIMITATIONS IMPOSED ON  
7 ELECTRICITY GENERATORS BY ANY OTHER PROVISION OF LAW THAT WOULD  
8 RESULT IN EMISSIONS REDUCTIONS IN ADDITION TO THOSE REQUIRED UNDER THIS  
9 SECTION.

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

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

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

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

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

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

30 2-1003.

31 (A) BEGINNING DECEMBER 1, 2007, AND EACH YEAR THEREAFTER, A PERSON  
32 WHO OWNS, LEASES, OPERATES, OR CONTROLS AN AFFECTED FACILITY SHALL  
33 SUBMIT TO THE DEPARTMENT, THE DEPARTMENT OF NATURAL RESOURCES, AND  
34 THE PUBLIC SERVICE COMMISSION, A REPORT THAT INCLUDES:

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

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

1 (3) A CURRENT COMPLIANCE PLAN; AND

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

3 (B) THE DEPARTMENT SHALL REVIEW THE INFORMATION SUBMITTED UNDER  
4 THIS SECTION TO DETERMINE WHETHER THE ACTUAL AND PROPOSED  
5 MODIFICATIONS AND PERMIT AND CONSTRUCTION SCHEDULES ARE ADEQUATE TO  
6 ACHIEVE THE EMISSIONS REQUIREMENTS UNDER THIS SUBTITLE AND SHALL MAKE  
7 THESE DETERMINATIONS PUBLICLY AVAILABLE ON AN ANNUAL BASIS.

8 2-1004.

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

11 2-1005.

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

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

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

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

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

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

26 (C) A CRIMINAL PROSECUTION FOR A VIOLATION BROUGHT UNDER THIS  
27 SECTION SHALL BE INSTITUTED WITHIN 3 YEARS AFTER THE VIOLATION WAS  
28 COMMITTED.

29 **Article - State Government**

30 9-2009.

31 (A) THERE IS A MARYLAND CARBON REDUCTION FUND ADMINISTERED BY  
32 THE ADMINISTRATION.

33 (B) THE FUND IS A SPECIAL, NONLAPSING FUND THAT IS NOT SUBJECT TO §  
34 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

1 (C) THE TREASURER SHALL HOLD THE FUND SEPARATELY AND THE  
2 COMPTROLLER SHALL ACCOUNT FOR THE FUND.

3 (D) THE FUND CONSISTS OF:

4 (1) PROCEEDS FROM THE SALE OF ALLOWANCES UNDER § 2-1002(E)(2)  
5 OF THE ENVIRONMENT ARTICLE;

6 (2) CRIMINAL FINES AND CIVIL PENALTIES IMPOSED UNDER TITLE 2,  
7 SUBTITLE 10 OF THE ENVIRONMENT ARTICLE;

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

9 (4) ANY OTHER MONEY FROM ANY OTHER SOURCE ACCEPTED FOR THE  
10 BENEFIT OF THE FUND.

11 (E) THE FUND MAY BE USED ONLY:

12 (1) TO IMPLEMENT STANDARDS AND TO PROVIDE INCENTIVES TO  
13 CONSUMERS SO THAT ENERGY EFFICIENT PRODUCTS AND SERVICES THAT ARE NOT  
14 BROADLY AVAILABLE AND USED BY STATE CONSUMERS BECOME STANDARD  
15 PRODUCT OFFERINGS;

16 (2) TO CAPTURE OPPORTUNITIES OTHERWISE LOST FOR  
17 COST-EFFECTIVE ENERGY EFFICIENT DESIGNS, MATERIALS, AND EQUIPMENT  
18 WHEN HOMES AND BUILDINGS ARE BUILT, REMODELED, OR RENOVATED, AND WHEN  
19 EQUIPMENT IS REPLACED;

20 (3) TO REDUCE PEAK DEMAND FOR ELECTRICITY AND IMPROVE  
21 SERVICE RELIABILITY FOR ALL CUSTOMERS THROUGH ENERGY EFFICIENCY  
22 MEASURES THAT ARE ESPECIALLY EFFECTIVE AT REDUCING PEAK SYSTEM  
23 DEMANDS; AND

24 (4) TO ENSURE THAT LOW-INCOME CUSTOMERS CAN FULLY  
25 PARTICIPATE IN OPPORTUNITIES TO SAVE ELECTRICITY AND REDUCE THEIR  
26 ELECTRICITY COSTS.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 July 1, 2006.