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HOUSE BILL NO. 389

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend the Code of Virginia by adding in Title 67 a chapter numbered 12, consisting of sections numbered 67-1200 through 67-1214, relating to the Virginia Offshore Wind Development Authority.

Patrons—Janis, Abbitt, Alexander, Anderson, Bell, Richard P., Cleaveland, Comstock, Cosgrove, Cox, J.A., Dance, Ebbin, Greason, Herring, Howell, A.T., Iaquinto, Knight, Miller, P.J., Morefield, Oder, Purkey, Stolle, Tata, Toscano, Villanueva and Watts

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Referred to Committee on Commerce and Labor

Whereas, the General Assembly declares that there exists a need to facilitate and coordinate efforts to develop offshore wind energy projects; and

Whereas, the General Assembly declares that the siting of large-scale offshore wind energy projects could provide clean, reliable electric energy to the coastal population centers of the Commonwealth; and

Whereas, the General Assembly declares that the development of the offshore wind energy industry would promote the creation of industry-related jobs in the manufacturing and service sectors; and

Whereas, the General Assembly declares that the development of offshore wind energy projects is consistent with the Commonwealth's energy objectives enumerated in § 67-101 of the Code of Virginia and furthers the Commonwealth Energy Policy set out in § 67-102 of the Code of Virginia; and

Whereas, the General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose, and will promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth; now, therefore

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 67 a chapter numbered 12, consisting of sections numbered 67-1200 through 67-1214, as follows:

CHAPTER 12.

VIRGINIA OFFSHORE WIND DEVELOPMENT AUTHORITY.

§ 67-1200. Definitions.

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

"Authority" means the Virginia Offshore Wind Development Authority created pursuant to this chapter.

"Bonds" means Virginia Power Development Bonds authorized pursuant to this chapter.

"Commission" means the State Corporation Commission.

"Developer" means any private developer of offshore wind energy projects.

"Offshore wind energy project" means a wind-powered electric energy facility, including tower, turbine, and associated equipment, located off the coast of the Commonwealth beyond the Commonwealth's three-mile jurisdictional limit, and includes interests in land, improvements, and ancillary facilities, including substations and transmission lines.

§ 67-1201. Authority created; purpose.

The Virginia Offshore Wind Development Authority is created as a body corporate and a political subdivision of the Commonwealth and as such shall have, and is vested with, all of the politic and corporate powers as are set forth in this chapter. The Authority is established for the purposes of facilitating, coordinating, and supporting the development, either by the Authority or by other qualified entities, of the offshore wind industry and offshore wind energy projects by collecting relevant metocean data, by identifying existing state and regulatory or administrative barriers to the development of the offshore wind industry, by upgrading port facilities to accommodate the manufacturing and assembly of offshore wind energy project components and vessels that will support the construction and operations of offshore wind energy projects, by developing, constructing and operating interconnection facilities on the Virginia shoreline that will accommodate multiple offshore wind energy projects, and ensuring that the development of such projects does not interfere with naval facilities and operations off the coast of the Commonwealth. The Authority shall, in cooperation with the state and local economic development authorities and the Secretary of Commerce and Trade, develop the offshore wind energy industry. The Authority shall also consult with research institutions, businesses, nonprofit organizations, and stakeholders as the Authority deems appropriate.

The Authority shall have only those powers enumerated in this chapter.

§ 67-1202. Membership; terms; vacancies; compensation and expenses.

A. The Authority shall be composed of 11 nonlegislative citizen members appointed by the Governor. Of these, three members shall be appointed by the Governor from a list of nine persons provided by the Secretary of the Navy or his designee. With the exception of the three members appointed from the list provided by the Secretary of the Navy or his designee, all members of the Authority shall reside in the Commonwealth.

B. Except as otherwise provided herein, all appointments shall be for terms of four years each. No member shall be eligible to serve more than two successive four-year terms. After expiration of an initial term of three years or less, two additional four-year terms may be served by such member if appointed thereto. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as the original appointment. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

C. The Authority shall appoint from its membership a chairman and a vice-chairman, both of whom shall serve in such capacities at the pleasure of the Authority. The chairman, or in his absence the vice-chairman, shall preside at all meetings of the Authority. The meetings of the Authority shall be held on the call of the chairman or whenever a majority of the members so request. A majority of members of the Authority serving at any one time shall constitute a quorum for the transaction of business.

D. Members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Such compensation and expenses shall be paid from such funds as shall be appropriated to the Authority by the General Assembly.

E. Members of the Authority shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.

F. Except as otherwise provided in this chapter, members of the Authority shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

§ 67-1203. Data collection.

A. The Authority shall operate in cooperation with the National Oceanic and Atmospheric Administration to upgrade wind resource and other metocean assessment equipment at Chesapeake Light.

B. The Authority may establish public-private partnerships with a developer pursuant to the Public-Private Educational Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) for the installation and operation of wind resource and other metocean equipment, including light detection and ranging equipment, meteorological measurement towers, and data collection platforms. Any partnership established pursuant to this subsection shall stipulate that:

1. The Authority and the developers shall share the costs of the upgrade equally;

2. The developer shall operate any meteorological measurement towers and data collection platforms; and

3. The developer shall make all collected data available to the Authority.

C. The Authority may establish public-private partnerships with a developer pursuant to the Public-Private Educational Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) for the collection of avian and marine environmental data. Any partnership established pursuant to this subsection shall stipulate that:

1. The Authority and the developer shall share the costs of data collection equally;

2. The developer shall manage the environmental data collection process; and

3. The developer shall make all collected data available to the Authority.

D. The Authority may make any data collected pursuant to this section available to the public.

§ 67-1204. Port facilities upgrades.

The Authority may establish public-private partnerships with entities pursuant to the Public-Private Educational Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) for the upgrade of port facilities to accommodate the manufacturing and assembly of offshore wind energy project components and vessels that will support the construction and operations of offshore wind energy projects. Any partnership established pursuant to this subsection shall stipulate that the Authority and the entities shall share the costs of the upgrade equally.

§ 67-1205. Federal loan guarantees.

A. The Authority, on behalf of the Commonwealth, shall apply to the U.S. Department of Energy for up to $4 billion of federal loan guarantees authorized or made available pursuant to Title XVII of the Energy Policy Act of 2005, 42 U.S.C. § 16511 et seq., the American Recovery and Reinvestment Act of 2009, P.L. 111-5, or other similar federal legislation, to facilitate the development of offshore wind energy projects.

B. Upon obtaining federal loan guarantees for offshore wind energy projects pursuant to subsection A, the Authority, subject to any restrictions imposed by federal law, may allocate or assign all or

portions thereof to qualified third parties, on such terms and conditions as the Authority finds are appropriate. Actions of the Authority relating to the allocation and assignment of such loan guarantees shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002. Decisions of the Authority shall be final and not subject to review or appeal.

§ 67-1206. Nonstock corporation to issue bonds.

The Authority may establish nonprofit, nonstock corporations under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as public instrumentalities exercising public and essential governmental functions with the sole responsibility of issuing bonds for the purposes outlined in this chapter and paying the related debt service on the bonds, with such debt service to be repaid solely by the revenues of the Authority.

§ 67-1207. Transmission of power from offshore wind energy projects.

The Authority shall take such actions as it deems appropriate in order to facilitate the development, construction, and operation of transmission lines and related facilities through which electric power generated at offshore wind energy projects may be connected to the electric grid at one or more locations within the Commonwealth.

§ 67-1208. Interconnection facilities; fees.

A. The Commission shall establish an annual fee to be paid by each developer, owner, or operator for the transmission of electric power generated at offshore wind energy projects to the interconnection facilities operated by the Authority. In so doing, the Commission may use any methodology to determine a fee it finds consistent with the public interest, but shall consider the annual total megawatts of electric energy transmitted by the offshore wind energy project, the expected rate of return on the sale of electric energy by the offshore wind energy project, and the cost to the Authority of the transmission of electric energy produced by the offshore wind energy project.

§ 67-1209. Powers and duties of the Authority.

In addition to such other powers and duties established under this chapter, the Authority shall have the power and duty to:

1. Adopt, use, and alter at will an official seal;

2. Make bylaws for the management and regulation of its affairs;

3. Maintain an office at such place or places within the Commonwealth as it may designate;

4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Authority, absolutely or in trust, from any source, public or private, for the purposes for which the Authority is created;

5. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of projects of, the sale of products of, or services rendered by the Authority at rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority; the planning, development, construction, improvement, rehabilitation, repair, furnishing, maintenance, and operation of its projects and properties; the payment of the costs accomplishing its purposes set forth in § 67-1201; the payment of the principal of and interest on its obligations; and the creation of reserves for such purposes, for other purposes of the Authority, and to pay the cost of maintaining, repairing, and operating any project and fulfilling the terms and provisions of any agreements made with the purchasers or holders of any such obligations;

6. Borrow money, make and issue bonds including bonds as the Authority may determine to issue for the purpose of accomplishing the purposes set forth in § 67-1201 or for refunding bonds previously issued by the Authority, whether such outstanding bonds have matured or are then subject to redemption, or any combination of such purposes; secure the payment of all bonds, or any part thereof, by pledge, assignment, or deed of trust of all or any of its revenues, rentals, and receipts or of any project or property, real, personal or mixed, tangible or intangible, or any rights and interest therein; make such agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the Authority shall deem advisable; and in general provide for the security for said bonds and the rights of holders thereof;

7. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;

8. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary, and fix their compensation to be payable from funds made available to the Authority;

9. Invest its funds as permitted by applicable law;

10. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, or real or personal property for the benefit of the Authority, and receive and accept from the Commonwealth or any state, and from any municipality, county, or other political subdivision thereof and any other source, aid or contributions of either money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and

contributions may be made;

11. Enter into agreements with any department, agency or instrumentality of the United States or of the Commonwealth and with lenders and enter into loans with contracting parties for the purpose of planning, regulating and providing for the financing or assisting in the financing of any project;

12. Do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied;

13. Construct, maintain, and operate interconnection facilities on the Virginia shoreline to connect offshore wind energy projects to the PJM transmission system; and

14. Enter into interstate partnerships to develop the offshore wind industry and offshore wind energy projects.

§ 67-1210. Director; staff; counsel to the Authority.

A. The Director of the Department of Mines, Minerals and Energy shall serve as Director of the Authority and shall administer the affairs and business of the Authority in accordance with the provisions of this chapter and subject to the policies, control, and direction of the Authority. The Director shall maintain, and be custodian of, all books, documents, and papers of or filed with the Authority. The Director may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that such copies are true copies, and all persons dealing with the Authority may rely on such certificates. The Director also shall perform such other duties as prescribed by the Authority in carrying out the purposes of this chapter.

B. The Department of Mines, Minerals and Energy shall serve as staff to the Authority.

C. The Office of the Attorney General shall provide counsel to the Authority.

§ 67-1211. Report to the General Assembly.

On or before November 30 of each year, the Authority shall report to the General Assembly on its activities and recommendations.

§ 67-1212. Form of accounts; annual audit.

A. The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes.

B. The accounts of the Authority shall be audited annually by the Auditor of Public Accounts or his legally authorized representatives. Copies of the annual audit shall be distributed to the Governor and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

§ 67-1213. Confidentiality of information.

A. The Authority shall hold in confidence the personal and financial information supplied to it, or maintained by it, concerning the siting and development of offshore wind energy projects.

B. Nothing in this section shall prohibit the Authority, in its discretion, from releasing any information that has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information.

C. Information supplied by or maintained on persons or entities applying for or receiving allocations of federal loan guarantees, as well as specific information relating to the amount and identity of recipients of such distributions, shall be subject to disclosure in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

§ 67-1214. Declaration of public purpose; exemption from taxation.

A. The exercise of the powers granted by this chapter shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience, and prosperity.

B. The Authority shall be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter, and the property of the Authority and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Authority under the provisions of this chapter.

2. That by December 1, 2010, the Department of Mines, Minerals, and Energy shall report to the Virginia Offshore Wind Development Authority on the appropriate placement of meteorological towers and necessary renovations to existing structures.

3. That the incumbent utility for the onshore service territory adjacent to any offshore wind generation project shall, at the request of the Authority, initiate a transmission study to determine the optimal interconnection option in the Hampton Roads region to accommodate the interconnection of multiple offshore wind energy projects. The incumbent utility shall initiate the study no more than 30 days following the request of the authority and shall report to the Authority within 180 days of the request. The Authority shall request the study no later than December 31, 2010. Upon completion of the study, the Authority shall file a request with PJM to establish an interconnection hub pursuant to § 67-1208 of the Code of Virginia.

4. That the Virginia Offshore Wind Development Authority is authorized to secure a Treasury loan in the amount of $3 million, payable after 10 years, as seed money to generate additional funds.

5. That initial appointments of members of the Virginia Offshore Wind Development Authority

shall be as follows: four members shall be appointed for terms of four years, four members shall be appointed for terms of three years; and three members shall be appointed for terms of two years. Thereafter, all appointments shall be for terms of four years.