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HOUSE BILL NO. 389

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Commerce and Labor
 on March 1, 2010)

(Patron Prior to Substitute—Delegate Janis)

A *BILL to amend the Code of Virginia by adding in Title 67 a chapter numbered 12, consisting of sections numbered 67-1200 through 67-1211, relating to the Virginia Offshore Wind Development Authority.*

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 67-1211, 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.

"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.

"Transmission study" means a study to determine the potential interconnection options to accommodate multiple offshore wind energy projects in the Hampton Roads region.

§ 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 energy industry, offshore wind energy projects and associated supply chain vendors by collecting relevant metocean and environmental data, by identifying existing state and regulatory or administrative barriers to the development of the offshore wind energy industry, by working in cooperation with relevant local, state, and federal agencies to upgrade port and other logistical facilities and sites to accommodate the manufacturing and assembly of offshore wind energy project components and vessels, and by ensuring that the development of such projects is compatible with other ocean uses and avian and marine resources, including both the possible interference with and positive effects on naval facilities and operations, NASA-Wallops Flight Facility operations, shipping lanes, recreational and commercial fisheries, and avian and marine species and habitats. The Authority shall, in cooperation with the relevant state and federal agencies as necessary, recommend ways to encourage and expedite the development of 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; 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 and one member shall be a representative of the Virginia Commercial Space Flight Authority. With the exception of the three members appointed from the list provided by the Secretary of the Navy or his designee and the representative of the Virginia Commercial Space Flight Authority, 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, except for the members representing the Navy, 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 initial appointments of members shall be as follows: four members shall be appointed for

60 terms of four years; four members shall be appointed for terms of three years; and three members shall
61 be appointed for terms of two years. Thereafter all appointments shall be for terms of four years.

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

67 E. Members shall serve without compensation. However, all members may be reimbursed for all
68 reasonable and necessary expenses incurred in the performance of their duties as provided in
69 §§ 2.2-2813 and 2.2-2825. Such expenses shall be paid from such funds as may be appropriated to the
70 Authority by the General Assembly.

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

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

76 § 67-1203. Data collection.

77 A. The Authority shall, through moneys derived from sources other than state funds, to the extent
78 such moneys are available, operate in cooperation with the National Oceanic and Atmospheric
79 Administration to upgrade wind resource and other metocean assessment equipment at Chesapeake Light
80 Tower and other structures.

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

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

87 2. The developer, in coordination with the Authority and relevant state and federal agencies, shall
88 operate any meteorological measurement towers and data collection platforms; and

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

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

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

95 2. The developer, in coordination with the Authority and relevant state and federal agencies, shall
96 manage the environmental data collection process; and

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

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

99 § 67-1204. Port facilities upgrades.

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

106 § 67-1205. Federal loan guarantees.

107 A. The Authority, on behalf of the Commonwealth, may apply to the U.S. Department of Energy for
108 federal loan guarantees authorized or made available pursuant to Title XVII of the Energy Policy Act of
109 2005, 42 U.S.C. § 16511 et seq., the American Recovery and Reinvestment Act of 2009, P.L. 111-5, or
110 other similar federal legislation, to facilitate the development of offshore wind energy projects.

111 B. Upon obtaining federal loan guarantees for offshore wind energy projects pursuant to subsection
112 A, the Authority, subject to any restrictions imposed by federal law, may allocate or assign all or
113 portions thereof to qualified third parties, on such terms and conditions as the Authority finds are
114 appropriate. Actions of the Authority relating to the allocation and assignment of such loan guarantees
115 shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to
116 subdivision B 4 of § 2.2-4002. Decisions of the Authority shall be final and not subject to review or
117 appeal.

118 § 67-1206. Transmission of power from offshore wind energy projects.

119 A. The incumbent, investor-owned utility for the onshore service territory adjacent to any offshore
120 wind generation project shall, at the request of the Department of Mines, Minerals and Energy, initiate
121 a transmission study. Such utility shall initiate the transmission study no more than 30 days following

the request of the Department of Mines, Minerals and Energy, and shall report to the Department of Mines, Minerals and Energy within 180 days of the request. The Department of Mines, Minerals and Energy shall report the results of the study to the Authority. The Department of Mines Minerals and Energy shall request the study no later than July 31, 2010.

B. Upon receipt of the study, but no later than May 31, 2011, the Authority shall recommend such actions as it deems appropriate to facilitate transmission of power from offshore wind energy projects.

§ 67-1207. 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. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
6. 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;
7. Invest its funds as permitted by applicable law;
8. 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;
9. 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;
10. Do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied;
11. Identify and take steps to mitigate existing state and regulatory or administrative barriers to the development of the offshore wind energy industry, including facilitating any permitting processes; and
12. Enter into interstate partnerships to develop the offshore wind energy industry and offshore wind energy projects.

§ 67-1208. 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.

§ 67-1209. Annual report.

On or before October 15 of each year, the Authority shall submit an annual summary of its activities and recommendations to the Governor and the chairmen of the House Appropriations Committee, the Senate Finance Committee, and the House and Senate Commerce and Labor Committees.

§ 67-1210. 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.).

183 § 67-1211. *Declaration of public purpose; exemption from taxation.*

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

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

190 **2. That by September 30, 2010, the Department of Mines, Minerals, and Energy shall report to the**
191 **Virginia Offshore Wind Development Authority on the appropriate placement of meteorological**
192 **towers and necessary renovations to existing structures.**