

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 10.1-1197.5, 10.1-1197.6, and 10.1-1197.8 of the Code of Virginia, relating to small renewable energy projects; environmental permit by rule process.

[S 1395]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1197.5, 10.1-1197.6, and 10.1-1197.8 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1197.5. Definitions.

As used in this article, "small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding ~~400~~ 150 megawatts that generates electricity only from sunlight, or wind; (ii) an electrical generation facility with a rated capacity not exceeding 100 megawatts that generates electricity only from falling water, wave motion, tides, or geothermal power; or ~~(ii)~~ (iii) an electrical generation facility with a rated capacity not exceeding 20 megawatts that generates electricity only from biomass, energy from waste, or municipal solid waste.

§ 10.1-1197.6. Permit by rule for small renewable energy projects.

A. Notwithstanding the provisions of § 10.1-1186.2:1, the Department shall develop, by regulations to be effective as soon as practicable, but not later than July 1, 2012, a permit by rule or permits by rule if it is determined by the Department that one or more such permits by rule are necessary for the construction and operation of small renewable energy projects, including such conditions and standards necessary to protect the Commonwealth's natural resources. If the Department determines that more than a single permit by rule is necessary, the Department initially shall develop the permit by rule for wind energy, which shall be effective as soon as practicable, but not later than January 1, 2011. Subsequent permits by rule regulations shall be effective as soon as practicable.

B. The conditions for issuance of the permit by rule for small renewable energy projects shall include:

1. A notice of intent provided by the applicant, to be published in the Virginia Register, that a person intends to submit the necessary documentation for a permit by rule for a small renewable energy project;

2. A certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;

3. Copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project;

4. A copy of the final interconnection agreement between the small renewable energy project and the regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the Department. The Department shall forward a copy of the agreement or study to the State Corporation Commission;

5. A certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the small renewable energy project by (i) an electrical generation facility that generates electricity only from sunlight or wind as designed does not exceed 150 megawatts; (ii) an electrical generation facility that generates electricity only from sunlight, wind, falling water, wave motion, tides, or geothermal power as designed does not exceed 100 megawatts; or ~~(ii)~~ (iii) an electrical generation facility that generates electricity only from biomass, energy from waste, or municipal solid waste as designed does not exceed 20 megawatts;

6. An analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

7. Where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;

8. If the Department determines that the information collected pursuant to subdivision B 7 indicates that significant adverse impacts to wildlife or historic resources are likely, the submission of a mitigation plan detailing reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions;

57 9. A certification signed by a professional engineer licensed in Virginia that the small renewable  
58 energy project is designed in accordance with all of the standards that are established in the regulations  
59 applicable to the permit by rule;

60 10. An operating plan describing how any standards established in the regulations applicable to the  
61 permit by rule will be achieved;

62 11. A detailed site plan with project location maps that show the location of all components of the  
63 small renewable energy project, including any towers. Changes to the site plan that occur after the  
64 applicant has submitted an application shall be allowed by the Department without restarting the  
65 application process, if the changes were the result of optimizing technical, environmental, and cost  
66 considerations, do not materially alter the environmental effects caused by the facility, or do not alter  
67 any other environmental permits that the Commonwealth requires the applicant to obtain;

68 12. A certification signed by the applicant that the small renewable energy project has applied for or  
69 obtained all necessary environmental permits;

70 13. A requirement that the applicant hold a public meeting. The public meeting shall be held in the  
71 locality or, if the project is located in more than one locality in a place proximate to the location of the  
72 proposed project. Following the public meeting, the applicant shall prepare a report summarizing the  
73 issues raised at the meeting, including any written comments received. The report shall be provided to  
74 the Department; and

75 14. A 30-day public review and comment period prior to authorization of the project.

76 C. The Department's regulations shall establish a schedule of fees, to be payable by the owner or  
77 operator of the small renewable energy project regulated under this article, which fees shall be assessed  
78 for the purpose of funding the costs of administering and enforcing the provisions of this article  
79 associated with such operations including, but not limited to, the inspection and monitoring of such  
80 projects to ensure compliance with this article.

81 D. The owner or operator of a small renewable energy project regulated under this article shall be  
82 assessed a permit fee in accordance with the criteria set forth in the Department's regulations. Such fees  
83 shall include an additional amount to cover the Department's costs of inspecting such projects.

84 E. The fees collected pursuant to this article shall be used only for the purposes specified in this  
85 article and for funding purposes authorized by this article to abate impairments or impacts on the  
86 Commonwealth's natural resources directly caused by small renewable energy projects.

87 F. There is hereby established a special, nonreverting fund in the state treasury to be known as the  
88 Small Renewable Energy Project Fee Fund, hereafter referred to as the Fund. Notwithstanding the  
89 provisions of § 2.2-1802, all moneys collected pursuant to this § 10.1-1197.6 shall be paid into the state  
90 treasury to the credit of the Fund. Any moneys remaining in the Fund shall not revert to the general  
91 fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be  
92 credited to it. The Fund shall be exempt from statewide indirect costs charged and collected by the  
93 Department of Accounts.

94 G. After the effective date of regulations adopted pursuant to this section, no person shall erect,  
95 construct, materially modify or operate a small renewable energy project except in accordance with this  
96 article or Title 56 if the small renewable energy project was approved pursuant to Title 56.

97 *H. Any small renewable energy project shall be eligible for permit by rule under this section if the*  
98 *project is proposed, developed, constructed, or purchased by a person that is not a utility regulated*  
99 *pursuant to Title 56.*

100 *I. Any small renewable energy project commencing operations after July 1, 2017, shall be eligible*  
101 *for permits by rule under this section and is exempt from State Corporation Commission environmental*  
102 *review or permitting in accordance with subsection B of § 10.1-1197.8 or other applicable law if the*  
103 *project is proposed, developed, constructed, or purchased by:*

104 *1. A public utility if the project's costs are not recovered from Virginia jurisdictional customers*  
105 *under base rates, a fuel factor charge under § 56-249.6, or a rate adjustment clause under subdivision*  
106 *A 6 of § 56-585.1; or*

107 *2. A utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of*  
108 *Title 56.*

109 **§ 10.1-1197.8. Limitation of State Corporation Commission authority.**

110 A. If the owner or operator of a small renewable energy project to whom the Department has  
111 authorized a permit by rule pursuant to this article is not a utility regulated pursuant to Title 56, then the  
112 State Corporation Commission shall not have jurisdiction to review the small renewable energy project  
113 or to condition the construction or operation of a small renewable energy project upon the State  
114 Corporation Commission's issuance of any permit or certificate under any provision of Title 56, provided  
115 that the State Corporation Commission shall retain jurisdiction to resolve requests for joint use of the  
116 rights of way of public service corporations pursuant to § 56-259 and denials of requests for  
117 interconnection of facilities pursuant to § 56-578.

118 B. If the owner or operator of a small renewable energy project to whom for which the Department  
119 has authorized a permit by rule pursuant to this article is a utility regulated pursuant to Title 56, such  
120 small renewable energy project shall be exempt from any provision of § 56-46.1 and any corresponding  
121 provision of subsection D of § 56-580 or Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 that requires  
122 environmental review and permitting by the State Corporation Commission. An owner or operator of a  
123 small renewable energy project that is a utility regulated pursuant to Title 56 granted a permit by rule  
124 pursuant to subsection I of § 10.1-1197.6, shall nonetheless not be required to obtain a certificate of  
125 public convenience and necessity pursuant to subsection D of § 56-580 or the Utility Facilities Act  
126 (§ 56-265.1 et seq.). Nothing in this section shall affect the jurisdiction of the State Corporation  
127 Commission regarding a utility that is not eligible for a permit by rule, or the requirement of such  
128 utility to obtain a certificate of public convenience and necessity.