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SENATE BILL NO. 1395

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on January 26, 2017)

(Patron Prior to Substitute—Senator Wagner)

A BILL 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.

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 (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 (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;

9. A certification signed by a professional engineer licensed in Virginia that the small renewable

60 energy project is designed in accordance with all of the standards that are established in the regulations
61 applicable to the permit by rule;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

111 **§ 10.1-1197.8. Limitation of State Corporation Commission authority.**

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

120 B. If the owner or operator of a small renewable energy project to whom for which the Department
121 has authorized a permit by rule pursuant to this article is a utility regulated pursuant to Title 56, such

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