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HOUSE BILL NO. 1902

Offered January 9, 2019

Prefiled January 4, 2019

A BILL to amend and reenact § 45.1-391 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 26 of Title 45.1 sections numbered 45.1-395 and 45.1-396, relating to the duties of the Solar Energy Center; establishment of the Solar Energy Special Fund; Solar Demonstration Projects Grant Program; contributions by certain utilities.

Patrons—Rasoul, Adams, D.M., Gooditis, Kory and Torian

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That § 45.1-391 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 26 of Title 45.1 sections numbered 45.1-395 and 45.1-396 as follows:

§ 45.1-391. Solar Energy Center; purposes.

The Virginia Solar Energy Center is continued as a part of the Department. The purposes of the Center are (i) to serve the people of the Commonwealth as a clearinghouse to gather, maintain and disseminate general and technical information on solar energy and its utilization; (ii) to coordinate programs for solar energy data-gathering in Virginia; (iii) to coordinate efforts and programs on solar energy with other state agencies and institutions, other states and federal agencies; (iv) to promote cooperation among and between Virginia business, industry, agriculture and the public related to the use of solar energy; (v) to develop public education programs on solar energy for use in schools and by the public; and (vi) to provide assistance in formulating policies on the utilization of solar energy that would be in the best interest of the Commonwealth; (vii) to recommend to the Director the recipients and amounts of grants for solar facilities from the Solar Energy Special Fund established by § 45.1-395; and (viii) to administer the Solar Demonstration Projects Grant Program established by § 45.1-396.

The intent of the General Assembly is to provide an organization for the purposes set out in this section to receive nonstate funds for such purposes.

§ 45.1-395. Solar Energy Special Fund established; purpose.

There is hereby created in the state treasury a special nonreverting fund to be known as the Solar Energy Special Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds voluntarily paid as Clean Energy Solar Fund Contributions pursuant to subsection D of § 45.1-396, all funds appropriated for such purpose, and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of making grants for solar facilities from the Solar Energy Special Fund in accordance with the Solar Demonstration Projects Grant Program conducted pursuant to § 45.1-396. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

§ 45.1-396. Solar Demonstration Projects Grant Program.

A. As used in this section:

"Center" means the Virginia Solar Energy Center established as provided in § 45.1-391.

"Congregational project" means the installation and operation of a solar facility upon real property in the Commonwealth owned, but not leased, by a religious organization.

"Educational organization" means (i) a school board operating a public elementary, middle, or high school in the Commonwealth or (ii) any public institution of higher education as defined in § 23.1-100.

"Educational project" means the installation and operation of a solar facility upon real property owned, but not leased, by an educational organization.

"Eligible entity" means an educational organization, a locality, or a religious organization.

"EPC firm" means a person based in the Commonwealth that designs, engineers, procures the components of and supplies for, and constructs the solar facility.

"Fund" means the Solar Energy Special Fund established as provided in § 45.1-395.

"Governmental project" means the installation and operation of a solar facility upon real property owned, but not leased, by a locality.

"Locality" means any county, city, or town in the Commonwealth.

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59 "Program" means the Solar Demonstration Projects Grant Program conducted pursuant to this
60 section.

61 "Religious organization" means any church, church diocese, religious congregation, or religious
62 society.

63 "Solar facility" means a solar photovoltaic energy generation system, including a system located on a
64 building's rooftop, that is intended to generate electricity by or for the eligible entity on whose property
65 it is located.

66 B. There is hereby established the Solar Demonstration Projects Grant Program for the purpose of
67 disbursing moneys from the Fund to eligible entities pursuant to this section in order to finance the
68 installation and operation of solar facilities. During the three-year period beginning January 1, 2020,
69 and ending January 1, 2023, the Department, acting through the Center, may award grants from
70 available moneys in the Fund to those eligible entities that are found by the Department to best advance
71 the objective of expanding the deployment of solar facilities in the Commonwealth. In order to be
72 eligible for a grant under the Program, an eligible entity that has contracted for the installation and
73 operation of a solar facility upon real property owned by the eligible entity may apply for a grant. The
74 Department shall review grant applications and, in its discretion, determine which, if any, applicants are
75 to receive such a grant for their solar facility. The authority of the Department to make grants from the
76 Fund pursuant to this section is subject to the following conditions:

77 1. A grant shall not exceed the eligible entity's costs for the installation and operation of the solar
78 facility as set forth in its contract therefor, including up-front amounts required to be paid by the
79 eligible entity prior to receiving electric power from a solar facility that is to be owned and operated by
80 a third party under a power purchase agreement.

81 2. A grant shall not be awarded with respect to a solar facility that is placed in service on or after
82 January 1, 2023.

83 3. Grants may be made to religious organizations only to the extent that the Department finds that
84 such grants are not prohibited by Article IV, Section 16 of the Constitution of Virginia.

85 4. The total amount of grants over the three-year term of the Program shall not exceed the moneys
86 deposited into the Fund.

87 5. Of the moneys in the Fund that are made available for grants over the three-year term of the
88 Program, 40 percent shall be awarded for congregational projects, 50 percent shall be awarded for
89 educational projects, and 10 percent shall be awarded for governmental projects.

90 6. Each solar facility for which a grant is awarded to an educational organization or governmental
91 organization serves the community and shall be deemed to be the public interest.

92 7. When ranking applications for grants submitted by educational organizations that are elementary,
93 middle, or high schools, such schools in which at least half the students are eligible for free or
94 subsidized lunch shall have priority over other schools in the awarding of grants from the Fund.

95 8. When ranking applications for grants submitted by educational organizations that are public
96 institutions of higher education, such institutions in which at least half the students come from families
97 with incomes at 60 percent or less of the median income of the locality in which the institution is
98 located shall have priority over other such institutions.

99 9. Any unawarded money remaining in the Fund on January 1, 2023, shall revert to the general
100 fund.

101 C. Grants awarded to an eligible entity may be used by the eligible entity to make payments to (i) an
102 EPC firm with which the eligible entity has contracted to install or operate the solar facility- that will
103 be owned by the eligible entity or (ii) a third party based in the Commonwealth that will own and
104 operate the solar facility pursuant to a third-party power purchase agreement under which the eligible
105 entity will purchase the electricity generated from the third-party-owned solar facility. Any sale of
106 electric power from a third party to an eligible entity under a power purchase agreement under clause
107 (ii) shall not constitute a retail sale of electricity subject to the provisions of Title 56. A person selling
108 electric power pursuant to such a power purchase agreement shall not constitute or be subject to
109 regulation as a public utility or public service company. The State Corporation Commission shall not
110 regulate or prescribe the rates, charges, and fees for the retail sale by any such person of electric
111 energy pursuant to such a power purchase agreement.

112 D. Each Phase I Utility and each Phase II Utility, as those terms are defined in subdivision A 1 of
113 § 56-585.1, shall make voluntary contributions, referred to herein as Clean Energy Solar Fund
114 Contributions, totaling \$1 billion in the aggregate over three years to the Fund as follows:

115 1. By August 1, 2019, each Phase I Utility shall make a voluntary contribution of \$95,238,095 to the
116 Fund;

117 2. By August 1, 2019, each Phase II Utility shall make a voluntary contribution of \$238,095,238 to
118 the Fund;

119 3. By August 1, 2020, each Phase I Utility shall make a voluntary contribution of \$95,238,095 to the
120 Fund;

121 4. By August 1, 2020, each Phase II Utility shall make a voluntary contribution of \$238,095,238 to
122 the Fund;

123 5. By August 1, 2021, each Phase I Utility shall make a voluntary contribution of \$95,238,095 to the
124 Fund; and

125 6. By August 1, 2021, each Phase II Utility shall make a voluntary contribution of \$238,095,239 to
126 the Fund.

127 No Phase I Utility or Phase II Utility shall (i) seek to recover Clean Energy Solar Fund
128 Contributions from ratepayers by raising electricity rates, adding fees, or other means or (ii) earn a
129 return on equity on any Clean Energy Solar Fund Contributions or costs associated with the Program.

130 E. The Center shall advertise the availability of grant funds and shall solicit, receive, and review
131 grant applications. Grants shall be awarded by the Center after consideration of the recommendations
132 of the Community Advisory Board. The decisions regarding who receives the grant awards shall be the
133 responsibility of the Center.

134 F. Any general funds for the Program shall be appropriated to the Center, which shall be
135 reimbursed for the reasonable costs incurred in administering and monitoring the Program. If funds
136 remain at the end of a grant cycle, the Center may carry forward such funds to the next funding cycle.

137 G. The Department shall by December 15, 2019, develop guidelines setting forth the general
138 requirements of qualifying for a grant to include a grant application form and a certification from the
139 recipient eligible entity specifying how the funds were expended. The guidelines shall establish a
140 timetable for the submission and approval of grant applications and requirements for the submission of
141 information regarding the solar system for which the grant application is submitted, including the
142 identity of the applicant and any third party that will own or operate the system pursuant to a power
143 purchase agreement. As a condition of receipt of a grant, an eligible entity shall make available to the
144 Department for inspection upon request all relevant and applicable documents to determine whether the
145 requirements for the receipt of grants as set forth in this section and guidelines issued hereunder have
146 been satisfied. The Department's issuance of such guidelines shall be exempt from the provisions of the
147 Administrative Process Act (§ 2.2-4000 et seq.).

148 H. An entity receiving a grant pursuant to this section may not use such system as the basis for
149 claiming any other grant or credit against taxes, as provided under the Code or in an appropriation
150 act.

151 I. There is hereby created in the executive branch the Community Advisory Board for the purpose of
152 advising the Center regarding the implementation of its duties under this section and to assist in
153 determining the relative merits of each proposal. The Community Advisory Board shall be composed of
154 nine members appointed by the Director in the discretion of the Department and shall include
155 representatives of local governments and school boards, institutions of higher education in the
156 Commonwealth, religious organizations, and solar energy industry groups. The members of the
157 Community Advisory Board shall not be eligible to receive compensation; however, the Department shall
158 provide funding for the reimbursement of expenses incurred by members of the Community Advisory
159 Board in the performance of their duties. The Department shall provide staff support to the Community
160 Advisory Board.

161 J. Actions of the Center relating to the awarding of grants shall be exempt from the provisions of the
162 Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002.

163 K. The Department shall submit a list of all eligible entities receiving grants under this section to the
164 Chairmen of the House Appropriations Committee and the Senate Finance Committee no later than
165 December 1 of each year in which grants are awarded.