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HOUSE BILL NO. 205

Offered January 8, 2020

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A BILL to amend and reenact §§ 10.1-1197.5 and 10.1-1197.6 of the Code of Virginia, relating to the issuance of permits by rule for small renewable energy projects.

 Patron—Campbell, R.R.

 Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1197.5 and 10.1-1197.6 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 ~~150~~ 100 megawatts that generates electricity only from sunlight or ~~wind, falling water, wave motion, tides, or geothermal power~~; (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~~ wind and disturbs fewer than 50 acres in the complete construction of the project including access roads; 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; *however, any proposed wind energy project with a project boundary located less than two miles from a jurisdictional boundary is not qualified for a permit by rule;*

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 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. *For wind energy projects, the engineering certification shall also state the amount of energy projected to be generated by the facility, on an annual average basis, based on wind studies conducted at the proposed project site for a minimum of two years;*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 1. A public utility if the project's costs are not recovered from Virginia jurisdictional customers under
115 base rates, a fuel factor charge under § 56-249.6, or a rate adjustment clause under subdivision A 6 of §
116 56-585.1; or

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