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SENATE BILL NO. 729

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on March 9, 2024)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend the Code of Virginia by adding in Chapter 22 of Title 2.2 an article numbered 13, consisting of sections numbered 2.2-2378 through 2.2-2390, relating to Virginia Clean Energy Innovation Bank; established; report.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 22 of Title 2.2 an article numbered 13, consisting of sections numbered 2.2-2378 through 2.2-2390, as follows:

Article 13.

Virginia Clean Energy Innovation Bank.

§ 2.2-2378. Virginia Clean Energy Innovation Bank.

The Virginia Clean Energy Innovation Bank is created as a public body corporate and as a political subdivision of the Commonwealth. The purpose of the Bank is to accelerate the deployment of clean energy projects, greenhouse gas emissions reduction projects, and other qualified projects through the strategic deployment of public funds in the form of grants, loans, credit enhancements, and other financing mechanisms in order to leverage existing public and private sources of capital to reduce the upfront and total cost of qualified projects and to overcome financial barriers to project adoption, especially in low-income communities.

§ 2.2-2379. Definitions.

As used in this article, unless the context requires a different meaning:

"Bank" means the Virginia Clean Energy Innovation Bank.

"Board" means the Board of Directors of the Virginia Clean Energy Innovation Bank.

"Community navigator" means an organization that works to facilitate access to clean energy project financing by individuals and community groups.

"Credit enhancement" means a pool of capital set aside to cover potential losses on loans and other investments made by financing entities. "Credit enhancement" includes loan loss reserves and loan guarantees.

"Energy storage system" means a system that absorbs, stores, and discharges electricity. "Energy storage system" does not include fossil fuel storage or power-to-gas storage that directly uses fossil fuel inputs.

"Greenhouse gas emissions" means emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride emitted by anthropogenic sources.

"Historically economically disadvantaged community" has the same meaning as provided in § 56-576.

"Loan loss reserves" means a pool of capital set aside to reimburse a private lender if a customer defaults on a loan, up to an agreed-upon percentage of loans originated by the private lender.

"Local workers" means Virginia residents who permanently reside within 150 miles of the location of a proposed project in which the Bank is considering to participate.

"Microgrid system" means an electrical grid that (i) serves a discrete geographical area from distributed energy resources and (ii) can operate independently from the central electric grid on a permanent or temporary basis.

"President" means the president appointed by the Board of Directors of the Bank.

"Qualified project" means a project, technology, product, service, or measure promoting energy efficiency, clean energy, electrification, or water conservation and quality that (i) substantially reduces greenhouse gas emissions; (ii) reduces energy use without diminishing the level of service; (iii) increases the deployment of renewable or non-carbon emitting energy projects, energy storage systems, district heating, smart grid technologies, or microgrid systems; (iv) replaces existing fossil-fuel-based technology with an end-use electric technology; (v) supports the development and deployment of electric vehicle charging stations and associated infrastructure, electric buses, and electric fleet vehicles; (vi) reduces water use or protects, restores, or preserves the quality of the Commonwealth's surface waters or the Chesapeake Bay; or (vii) incentivizes customers to shift demand in response to changes in the price of electricity or when system reliability is not jeopardized.

"Renewable energy" means electric energy generated by a source that is considered a renewable energy standard eligible source under the provisions of § 56-585.5.

"Securitization" means the conversion of an asset composed of individual loans into marketable securities.

"Smart grid" means a digital technology that allows for two-way communication between a utility

60 and the utility's customers and enables the utility to control power flow and load in real time.

61 **§ 2.2-2380. Board of Directors; members; terms; compensation; president.**

62 A. The Bank shall be governed by a Board of Directors that shall have a total membership of 12
63 members that shall consist of nine nonlegislative citizen members and three ex officio members.
64 Nonlegislative citizen members shall be appointed as follows: four members to be
65 appointed by the Senate Committee on Rules, four members to be appointed by the Speaker of the
66 House of Delegates, and one member to be appointed by the Governor, each of whom shall have
67 expertise in real estate, finance, or project development, or legal expertise in zero-emission or
68 low-emission energy generation, infrastructure, transportation, agriculture, storm water management, or
69 housing. The Director of the Department of Energy, the Chief Executive Officer of the Virginia
70 Economic Development Partnership Authority, and the State Treasurer or their designees shall serve ex
71 officio with voting privileges. Nonlegislative citizen members of the Board shall be citizens of the
72 Commonwealth.

73 B. After an initial staggering of terms, nonlegislative citizen members of the Board shall serve terms
74 of three years. No nonlegislative citizen member shall be eligible to serve more than two consecutive
75 three-year terms. Any appointment to fill a vacancy shall be for the remainder of the unexpired term. A
76 person appointed to fill a vacancy may be appointed to serve two additional terms. Ex officio members
77 shall serve terms coincident with their terms of office.

78 C. Members of the Board shall receive such compensation for the performance of their duties as
79 provided in § 2.2-2813. Members shall be reimbursed for all reasonable and necessary expenses
80 incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the
81 costs of compensation and expenses of the members shall be provided by the Bank.

82 D. The Board shall annually elect a chairman and vice-chairman from among its nonlegislative
83 citizen members. A majority of the members shall constitute a quorum for the transaction of the Board's
84 business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights
85 and perform all duties of the Board. The Board shall meet at least quarterly or at the call of the
86 chairman.

87 E. The Board shall appoint a president of the Bank, who shall not be a member of the Board, and
88 who shall serve at the pleasure of the Board and carry out such powers and duties conferred upon him
89 by the Board.

90 **§ 2.2-2381. Powers and duties of the president.**

91 The president shall employ or retain such agents or employees as may be necessary to fulfill the
92 duties of the Bank conferred upon the president, subject to the Board's approval. Employees of the Bank
93 shall be eligible for membership in the Virginia Retirement System and participation in all of the health
94 and related insurance and other benefits, including premium conversion and flexible benefits, available
95 to state employees as provided by law. The president shall also exercise such powers and duties relating
96 to the Bank as may be delegated to him by the Board, including powers and duties involving the
97 exercise of discretion. The president shall also exercise and perform such other powers and duties as
98 may be lawfully delegated to him or as may be conferred or imposed upon him by law.

99 **§ 2.2-2382. Powers and duties of the Bank.**

100 A. The Bank is granted all powers necessary or convenient for the carrying out of its purposes
101 pursuant to this article, including the power to:

- 102 1. Sue and be sued, implead and be impleaded, complain and defend in all courts;
- 103 2. Adopt, use, and alter at will a common seal;
- 104 3. Acquire, purchase, hold, use, lease, or otherwise dispose of any real or personal property or any
105 interest therein;
- 106 4. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the
107 sale of products of, or services rendered by the Bank to pay its expenses;
- 108 5. Prepare and enter into contracts and agreements with any person or federal, state, or local
109 government agency;
- 110 6. Employ, at its discretion, such agents and employees as may be necessary, and to fix their
111 compensation to be payable from funds made available to the Bank. Such agents and employees may
112 reside within or outside of the Commonwealth and the United States and are not required to be citizens
113 of the Commonwealth. Legal services for the Bank shall be provided by the Attorney General in
114 accordance with Chapter 5 (§ 2.2-500 et seq.);
- 115 7. Apply for and accept gifts, grants, aid, and donations from any source to be expended in
116 furtherance of accomplishing the objectives of the Bank. All federal funding accepted under this
117 subdivision shall be accepted and expended by the Bank in accordance with such terms and conditions
118 as are prescribed by the United States and are consistent with state law, and all state funding accepted
119 under this subdivision shall be accepted and expended in accordance with such terms and conditions as
120 prescribed by the Commonwealth;
- 121 8. Adopt, alter, and repeal bylaws, rules, and regulations governing the transaction of the Bank's

business, exercises of its powers, and performance of its duties; and

9. Seek to qualify as a state energy financing institution as defined in 42 U.S.C. § 16511.

B. In carrying out its powers and duties pursuant to this article, the Bank shall:

1. Serve as a financial resource to reduce the upfront and total costs of implementing qualified projects;

2. Ensure that all financed projects reduce or do not contribute to greenhouse gas emissions and that no more than 15 percent in the aggregate of available funds are used to finance projects involving coalbed methane, as such term is defined in § 45.2-1600 or nuclear power;

3. Ensure that financing terms and conditions offered are well suited to qualified projects;

4. Strategically prioritize the use of the Bank's funds to leverage private investment in qualified projects, with the aim of achieving a high ratio of private to public money invested through funding mechanisms that support, enhance, and complement private lending and investment;

5. Coordinate with existing federal, state, local, utility, and other programs to ensure that the Bank's resources are being used most effectively to add to and complement those programs;

6. Stimulate demand for qualified projects by (i) contracting with the Department to provide, including through subcontracts with community navigators, information to project participants about federal, state, local, utility, and other Bank financial assistance for qualifying projects and technical information on energy conservation and renewable energy measures; (ii) forming partnerships with contractors and informing contractors about the Bank's financing programs; (iii) developing innovative marketing strategies to stimulate project owner interest, especially in underserved communities; and (iv) incentivizing financing entities to increase activity in underserved markets;

7. Finance projects in all regions of the Commonwealth;

8. Develop participant eligibility standards and other terms and conditions for financial support provided by the Bank;

9. Develop and administer (i) policies to collect reasonable fees for Bank services and (ii) risk management activities to support ongoing Bank activities;

10. Develop consumer protection standards governing the Bank's investments to ensure that financial support is provided responsibly and transparently and is in the financial interest of participating project owners;

11. Develop methods to accurately measure the impact of the Bank's activities, particularly on low-income communities and on greenhouse gas emissions reductions;

12. Hire a president and sufficient staff with the appropriate skills and qualifications to carry out the Bank's programs, making an affirmative effort to recruit and hire a president and staff who are from, or share the interests of, the communities the Bank is required to serve;

13. Apply for, either as a direct or subgrantee applicant, and accept Greenhouse Gas Reduction Fund grants authorized by the federal Clean Air Act, 42 U.S.C. § 7434(a). To the extent practicable, applications for these funds by or on behalf of the Bank shall be made in coordination with other Virginia applicants;

14. Acting under its powers as a state energy financing institution under 42 U.S.C. § 16511, collaborate with the U.S. Department of Energy Loan Programs Office to ensure that authorities made available under the federal Inflation Reduction Act of 2022, P.L. 117-169, maximally benefit Virginians;

15. Ensure that Bank contracts with all third-party administrators, contractors, and subcontractors contain required covenants, representations, and warranties specifying that contracted third parties are agents of the Bank and that all acts of contracted third parties are considered acts of the Bank, provided that the act is within the contracted scope of work; and

16. Undertake such other activities as are necessary to carry out the provisions of this article.

C. In carrying out its powers and duties pursuant to this article, the Bank may:

1. Employ credit enhancement mechanisms that reduce financial risk for financing entities by providing assurance that a limited portion of a loan or other financial instrument is assumed by the Bank via a loan loss reserve, loan guarantee, or other mechanism;

2. Co-invest in a qualified project by providing senior or subordinated debt, equity, or other mechanisms in conjunction with other investment, co-lending, or financing;

3. Aggregate small and geographically dispersed qualified projects in order to diversify risk or secure additional private investment through securitization or similar resale of the Bank's interest in a completed qualified project; and

4. Expend funds appropriated to the Bank for start-up purposes, which may be used for financing programs and project investments authorized under this article, prior to adoption of the strategic plan required pursuant to § 2.2-2384 and the investment strategy required pursuant to § 2.2-2385.

§ 2.2-2383. Bank lending practices; consumer protection.

A. In determining the projects in which the Bank will participate, the Bank shall give preference to projects that (i) maximize the creation of high-quality employment and apprenticeship opportunities for

183 local workers, consistent with the public interest, especially workers from historically economically
184 disadvantaged communities, and Virginia communities hosting retired or retiring electric generation
185 facilities, including workers previously employed at retiring facilities, and (ii) utilize energy technologies
186 produced domestically that received an advanced manufacturing tax credit under § 45X of the Internal
187 Revenue Code, as allowed under the federal Inflation Reduction Act of 2022, P.L. 117-169.

188 B. The Bank shall require, for all projects for which the Bank provides financing, that (i) financing
189 is not offered without first providing the financing terms and conditions of any project for comment by
190 the Treasury Board established by § 2.2-2415 and ensuring that the participants meet the Bank's
191 underwriting criteria and (ii) any loan made to a homeowner for a project on the homeowner's
192 residence complies with all applicable state and federal consumer lending laws.

193 **§ 2.2-2384. Strategic plan.**

194 A. By December 15, 2024, and each December 15 in even-numbered years thereafter, the Bank shall
195 develop and adopt a strategic plan that prioritizes the Bank's activities over the next two years. The
196 strategic plan shall (i) identify targeted underserved markets for qualified projects in Virginia; (ii)
197 develop specific programs to overcome market impediments through access to Bank financing and
198 technical assistance; and (iii) develop outreach and marketing strategies designed to make potential
199 project developers, participants, and communities aware of financing and technical assistance available
200 from the Bank, including the deployment of community navigators.

201 B. Elements of the strategic plan shall be informed by the Bank's analysis of the market for qualified
202 projects and by the Bank's experience under the previous strategic plan, including the degree to which
203 performance targets were or were not achieved by each financing program. In addition, the Bank shall
204 actively seek input regarding activities that should be included in the strategic plan from stakeholders,
205 historically economically disadvantaged communities, the general public, and participants, including via
206 meetings required pursuant to § 2.2-2386.

207 C. The Bank shall establish annual targets in a strategic plan for each financing program regarding
208 the number of projects, level of Bank investments, greenhouse gas emissions reductions, and installed
209 generating capacity or energy savings the Bank hopes to achieve, including separate targets for Bank
210 activities undertaken in historically economically disadvantaged communities.

211 D. The Bank's targets and strategies shall be designed to ensure that no less than 40 percent of the
212 direct benefits of Bank activities flow to historically economically disadvantaged communities.

213 E. The Bank shall submit a draft strategic plan to the General Assembly by October 15 in any
214 even-numbered year.

215 **§ 2.2-2385. Investment strategy; content; process.**

216 A. No later than December 15, 2024, and every four years thereafter, the Bank shall adopt a
217 long-term investment strategy to ensure that the Bank's paramount goal to reduce greenhouse gas
218 emissions is reflected in all of the Bank's operations. The investment strategy shall address:

219 1. The types of qualified projects the Bank should focus on;

220 2. Gaps in current qualified project financing that present the greatest opportunities for successful
221 action by the Bank;

222 3. How the Bank can best position itself to maximize its impact without displacing, subsidizing, or
223 assuming risk that should be shared with financing entities;

224 4. Financing tools that will be most effective in achieving the Bank's goals;

225 5. Partnerships the Bank should establish with other organizations to increase the likelihood of
226 success; and

227 6. How values of economic and geographic balance can be integrated into all investment operations
228 of the Bank.

229 B. In developing an investment strategy, the Bank shall consult, at a minimum, with similar
230 organizations in other states, lending authorities, state agencies, utilities, environmental and energy
231 policy nonprofits, and other organizations that can provide valuable advice on the Bank's activities. The
232 Bank shall consult with the Department of Environmental Quality and the Department of Conservation
233 and Recreation to identify and incorporate flood resilience and water quality projects into the
234 investment strategy.

235 C. The long-term investment strategy shall contain provisions ensuring that:

236 1. Bank investments are not made solely to reduce private risk; and

237 2. Private financing entities do not unilaterally control the terms of investments to which the Bank is
238 a party.

239 D. The Board shall submit a draft long-term investment strategy for comment to each of the groups
240 and individuals with whom the Board consults pursuant to subsection B and to the General Assembly
241 and shall post the draft strategy on the Bank's website. The Bank shall accept written comments on the
242 draft strategy for at least 30 days and shall consider the comments in preparing the final long-term
243 investment strategy.

244 **§ 2.2-2386. Public outreach.**

The Bank shall:

1. Maintain a public website that provides information about the Bank's operations, current financing programs, and practices, including rates, terms, and conditions; the number and amount of investments by project type; the number of jobs created; the financing application process; and other information;

2. Periodically issue an electronic newsletter to stakeholders and the public containing information on the Bank's products, programs, and services and key Bank events and decisions; and

3. Hold quarterly meetings that are accessible online to update the general public on the Bank's activities, report progress being made in regard to the Bank's strategic plan and long-term investment strategy, and invite audience questions regarding Bank programs.

§ 2.2-2387. Form and audit of accounts and records.

A. The accounts and records of the Bank showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes.

B. The accounts and records of the Bank are subject to an annual audit by the Auditor of Public Accounts or his legal representative.

§ 2.2-2388. Exemption from taxes or assessments.

The exercise of the powers granted by this article shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of projects by the Bank and the undertaking of activities in furtherance of the purpose of the Bank constitute the performance of essential governmental functions, the Bank shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the Bank under the provisions of this article or upon the income therefrom, including sales and use taxes on tangible personal property used in the operations of the Bank, and shall at all times be free from state and local taxation. The exemption granted in this section shall not be construed to extend to persons conducting on the premises of a facility businesses for which local or state taxes would otherwise be required.

§ 2.2-2389. Exemption of Bank from personnel and procurement procedures.

The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Bank in the exercise of any power conferred under this article.

§ 2.2-2390. Annual report.

The Bank shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Bank no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website. The executive summary shall include information regarding efforts supported by the Bank.

2. That the initial appointments by the Governor of nonlegislative citizen members to the Board of Directors of the Virginia Clean Energy Innovation Bank established by this act shall be staggered as follows: (i) one member appointed by the Senate Committee on Rules for a term of one year and two members appointed by the Speaker of the House of Delegates for a term of one year; (ii) two members appointed by the Senate Committee on Rules for a term of two years and one member appointed by the Speaker of the House of Delegates for a term of two years; and (iii) one member appointed by the Senate Committee on Rules one for a term of three years, one member appointed by the Speaker of the House of Delegates for a term of three years, and one member appointed by the Governor for a term of three years. A nonlegislative citizen member who is appointed for an initial term of one or two years may be appointed for an additional two terms.