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SENATE BILL NO. 393

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend the Code of Virginia by adding in Title 67 a chapter numbered 12, consisting of sections numbered 67-1200 through 67-1212, relating to the Virginia Offshore Wind Project Development Commission.*

Patrons—Wagner, Martin, McWaters and Vogel

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 67 a chapter numbered 12, consisting of sections numbered 67-1200 through 67-1212, as follows:

CHAPTER 12.**VIRGINIA OFFSHORE WIND PROJECT DEVELOPMENT COMMISSION.****§ 67-1200. Definitions.**

As used in this chapter, unless the context requires another meaning:

"Commission" means the Virginia Offshore Wind Project Development Commission created pursuant to this chapter.

"Offshore wind energy project" means a wind-powered electric energy facility, including tower, turbine, and associated equipment, located off the coast of the Commonwealth beyond the Commonwealth's three-mile jurisdictional limit, and includes interests in land, improvements, and ancillary facilities, including substations and transmission lines.

§ 67-1201. Declarations; determination.

A. The General Assembly declares that:

1. There exists a need to facilitate and coordinate efforts to develop offshore wind energy projects;
2. The siting of large-scale offshore wind energy projects could provide clean, reliable electric energy to the coastal population centers of the Commonwealth; and
3. The development of offshore wind energy projects is consistent with the Commonwealth's energy objectives enumerated in § 67-101 and furthers the Commonwealth Energy Policy set out in § 67-102.

B. The General Assembly determines that the creation of a Commission for this purpose is in the public interest, serves a public purpose, and will promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth.

§ 67-1202. Commission created; purpose.

The Virginia Offshore Wind Project Development Commission is created as a body corporate and a political subdivision of the Commonwealth and as such shall have, and is vested with, all of the politic and corporate powers as are set forth in this chapter. The Commission is established for the purposes of facilitating and coordinating the development, either by the Commission or by other qualified entities, of offshore wind energy projects by applying for federal leases for offshore wind development, by applying for federal approvals required for the siting of such projects, by seeking federal loan guarantees in connection with the development of such projects, and by ensuring that the development of such projects does not interfere with naval facilities and operations off the coast of the Commonwealth. The Commission shall have only those powers enumerated in this chapter.

§ 67-1203. Membership; terms; vacancies; compensation and expenses.

A. The Commission shall be composed of 11 nonlegislative citizen members appointed by the Governor. Of these, three members shall be appointed by the Governor from a list of nine persons provided by the Secretary of the Navy or his designee. With the exception of the three members appointed from the list provided by the Secretary of the Navy or his designee, all members of the Commission shall reside in the Commonwealth.

B. Except as otherwise provided herein, all appointments shall be for terms of four years each. No member shall be eligible to serve more than two successive four-year terms. After expiration of a term of three years or less, two additional four-year terms may be served by such member if appointed thereto. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as the original appointment. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

C. The initial appointments of members shall be as follows: four members shall be appointed for terms of four years; four members shall be appointed for terms of three years; and three members shall

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59 *be appointed for terms of two years. Thereafter all appointments shall be for terms of four years.*

60 *D. The Commission shall appoint from its membership a chairman and a vice-chairman, both of*
61 *whom shall serve in such capacities at the pleasure of the Commission. The chairman, or in his*
62 *absence, the vice-chairman, shall preside at all meetings of the Commission. The meetings of the*
63 *Commission shall be held on the call of the chairman or whenever the majority of the members so*
64 *request. A majority of members of the Commission serving at any one time shall constitute a quorum for*
65 *the transaction of business.*

66 *E. Members shall receive such compensation for the performance of their duties as provided in*
67 *§ 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the*
68 *performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Such compensation and expenses*
69 *shall be paid from such funds as shall be appropriated to the Commission by the General Assembly.*

70 *F. Members of the Commission shall be subject to the standards of conduct set forth in the State and*
71 *Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed from office for*
72 *misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.*

73 *G. Except as otherwise provided in this chapter, members of the Commission shall be subject to the*
74 *provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

75 *§ 67-1204. Sites for offshore wind energy projects.*

76 *A. The Commission, on behalf of the Commonwealth, shall apply to the Minerals Management*
77 *Service of the U.S. Department of the Interior for authority, under an agreement of lease, easement, or*
78 *license to locate and operate offshore wind energy projects upon or over portions of the Outer*
79 *Continental Shelf that are subject to federal jurisdiction, at such locations and upon such terms as the*
80 *Commission deems appropriate.*

81 *B. The Commission shall be the sole entity authorized by the Commonwealth to apply to the*
82 *Minerals Management Service for a lease, easement, or license to locate or operate an offshore wind*
83 *energy project that would require the use of state-owned ocean floor or other marine resources in*
84 *connection with the development or operation of the project, including the siting of cables and*
85 *transmission lines.*

86 *C. Upon entering into a lease, easement, or license agreement with the Minerals Management*
87 *Service that authorizes the Commission to locate and operate offshore wind energy projects, the*
88 *Commission, subject to any restrictions imposed by federal law, may allocate or assign all or portions*
89 *thereof to qualified third parties, on such terms and conditions as the Commission finds are appropriate.*
90 *Actions of the Commission relating to the allocation and assignment of such property interests shall be*
91 *exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to*
92 *subdivision B 4 of § 2.2-4002. Decisions of the Commission shall be final and not subject to review or*
93 *appeal.*

94 *§ 67-1205. Federal loan guarantees.*

95 *A. The Commission, on behalf of the Commonwealth, shall apply to the U.S. Department of Energy*
96 *for up to \$4 billion of federal loan guarantees authorized or made available pursuant to Title XVII of*
97 *the Energy Policy Act of 2005, 42 U.S.C. § 16511 et seq., the American Recovery and Reinvestment Act*
98 *of 2009 (H.R. 1), or other similar federal legislation, to facilitate the development of offshore wind*
99 *energy projects.*

100 *B. Upon obtaining federal loan guarantees for offshore wind energy projects pursuant to subsection*
101 *A, the Commission, subject to any restrictions imposed by federal law, may allocate or assign all or*
102 *portions thereof to qualified third parties, on such terms and conditions as the Commission finds are*
103 *appropriate. Actions of the Commission relating to the allocation, and assignment of such loan*
104 *guarantees shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.)*
105 *pursuant to subdivision B 4 of § 2.2-4002. Decisions of the Commission shall be final and not subject to*
106 *review or appeal.*

107 *§ 67-1206. Minimization of effect on naval operations.*

108 *The Commission shall facilitate or conduct a negotiation or mediation process that endeavors to*
109 *develop an agreement between the Commonwealth and the U.S. Department of Defense that provides for*
110 *the development of offshore wind energy projects at sites that will not impede or interfere with the*
111 *conduct of naval operations, including the conduct of training exercises and the use of sea lanes.*

112 *§ 67-1207. Transmission of power from offshore wind energy projects.*

113 *The Commission shall take such actions as it deems appropriate in order to facilitate the*
114 *development of transmission lines and related facilities through which electric power generated at*
115 *offshore wind energy projects may be connected to the electric grid at one or more locations within the*
116 *Commonwealth. In connection therewith, the Commission is authorized to make application to*
117 *governmental agencies for any necessary permits or approvals and to enter into agreements with other*
118 *persons, public or private, to ensure the development of an infrastructure that is adequate to support the*
119 *transmission of such power.*

120 *§ 67-1208. Powers and duties of the Commission.*

In addition to such other powers and duties established under this chapter, the Commission shall have the power and duty to:

- 1. Adopt, use, and alter at will an official seal;*
- 2. Make bylaws for the management and regulation of its affairs;*
- 3. Maintain an office at such place or places within the Commonwealth as it may designate;*
- 4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Commission, absolutely or in trust, from any source, public or private, for the purposes for which the Commission is created;*
- 5. Determine how interests in real property acquired by lease, easement or otherwise from the Minerals Management Service shall be developed by the Commission or assigned to another entity, public or private, for use as an offshore wind energy project;*
- 6. Determine how federal loan guarantees shall be used by the Commission or allocated to another entity, public or private, in order to facilitate the development of offshore wind energy projects;*
- 7. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;*
- 8. Invest its funds as permitted by applicable law; and*
- 9. Do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied.*

§ 67-1209. Director; staff; counsel to the Commission.

A. The Director of the Department of Mines, Minerals and Energy shall serve as director of the Commission and shall administer the affairs and business of the Commission in accordance with the provisions of this chapter and subject to the policies, control, and direction of the Commission. The director shall maintain, and be custodian of, all books, documents and papers of or filed with the Commission. The director may cause copies to be made of all minutes and other records and documents of the Commission and may give certificates under seal of the Commission to the effect that such copies are true copies, and all persons dealing with the Commission may rely on such certificates. The director also shall perform such other duties as prescribed by the Commission in carrying out the purposes of this chapter.

B. The Department of Mines, Minerals and Energy of the Commonwealth shall serve as staff to the Commission.

C. The Office of the Attorney General shall provide counsel to the Commission.

§ 67-1210. Form of accounts; annual audit.

A. The accounts and records of the Commission 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 of the Commission shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives. Copies of the annual audit shall be distributed to the Governor and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

§ 67-1211. Confidentiality of information.

A. The Commission shall hold in confidence the personal and financial information supplied to it, or maintained by it, concerning the siting and development of offshore wind energy projects.

B. Nothing in this section shall prohibit the Commission, in its discretion, from releasing any information that has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information.

C. Information supplied by or maintained on persons or entities applying for or receiving allocations of federal loan guarantees, as well as specific information relating to the amount and identity of recipients of such distributions, shall be subject to disclosure in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

§ 67-1212. Declaration of public purpose; exemption from taxation.

A. The exercise of the powers granted by this chapter shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience, and prosperity.

B. The Commission shall be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter, and the property of the Commission and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Commission under the provisions of this chapter.