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SENATE BILL NO. 1091

Offered January 9, 2019

Prefiled December 19, 2018

A BILL to amend and reenact § 58.1-3660 of the Code of Virginia, relating to property tax exemption for solar photovoltaic systems; bonding requirement; regulations.

Patrons—Reeves and Stanley; Delegate: Kory

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3660 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-3660. Certified pollution control equipment and facilities.

A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real or personal property and such property. Certified pollution control equipment and facilities shall be exempt from state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia.

B. 1. In order to qualify for the exemption set forth in subsection A, any owner or operator of solar photovoltaic systems, including equipment, facilities, or devices owned or operated by a business that collects, generates, transfers, or stores thermal or electric energy, shall provide to the Department of Mines, Minerals and Energy a performance and reclamation bond in an amount equal to \$10,000 per acre of land associated with the solar facility or equipment, consistent with federal regulations set forth pursuant to 43 C.F.R. 2809.18(e) for solar energy development projects inside federally designated leasing areas. If any similar guarantees or instruments are required by the local government in which the solar photovoltaic system is located or by other permitting entities for environmental liabilities, the Commonwealth shall be listed as an additional name insured on the bond instrument.

2. The performance and reclamation bond required by subdivision 1 shall be held by the Department of Mines, Mineral and Energy and shall serve as a single instrument to cover all costs incurred in preventing or alleviating damage, loss, hardship, or suffering caused by a release of cadmium, tellurium, germanium, indium, or associated heavy metals directly related to solar energy production or transmission facilities, and for any costs incurred to address (i) environmental liabilities, including hazardous materials liabilities such as risks associated with hazardous waste and hazardous substances such as herbicides and petroleum-based fluids; (ii) decommissioning, removal, and property disposal of improvements and facilities; and (iii) reclamation, revegetation, restoration, and soil stabilization, including potential flood events and downstream sedimentation from the site that may result in impacts off-site.

3. The Department of Mines, Minerals and Energy shall hold any bond, security, irrevocable letter of credit, or policy of insurance for environmental liabilities for the solar photovoltaic system, and shall not accept a corporate guarantee as an acceptable form of bond.

4. No later than October 1, 2020, the Department of Mines, Minerals and Energy, with the assistance of the Virginia Solar Energy Development and Energy Storage Authority, shall promulgate regulations requiring that the owner or operator of a solar photovoltaic systems eligible for the exemption set forth in subsection A submit a decommissioning and site reclamation plan defining the reclamation, revegetation, restoration, and soil stabilization plans for the project area based on both total megawatt production and total land disturbance acreage per project site.

C. As used in this section:

"Certified pollution control equipment and facilities" shall mean any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination. Such property shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, landfill gas, synthetic or natural gas recovered from waste or other fuel, and equipment used in collecting, processing, and distributing, or generating electricity from, landfill gas or synthetic or natural gas recovered from waste, whether or not such property has been certified to the Department of Taxation by a state certifying authority. Such property shall also include solar energy equipment, facilities, or devices owned or operated by a business

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that collect, generate, transfer, or store thermal or electric energy whether or not such property has been certified to the Department of Taxation by a state certifying authority. For solar photovoltaic (electric energy) systems, this exemption applies only to (i) projects equaling 20 megawatts or less, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or before December 31, 2018; (ii) projects equaling 20 megawatts or less, as measured in alternating current (AC) generation capacity, that serve any of the public institutions of higher education listed in § 23.1-100 or any private college as defined in § 23.1-105; (iii) 80 percent of the assessed value of projects for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization (a) between January 1, 2015, and June 30, 2018, for projects greater than 20 megawatts or (b) on or after July 1, 2018, for projects greater than 20 megawatts and less than 150 megawatts, as measured in alternating current (AC) generation capacity, and that are first in service on or after January 1, 2017; (iv) projects equaling five megawatts or less, as measured in alternating current (AC) generation capacity, for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or after January 1, 2019; and (v) 80 percent of the assessed value of all other projects equaling more than five megawatts and less than 150 megawatts, as measured in alternating current (AC) generation capacity for which an initial interconnection request form has been filed with an electric utility or a regional transmission organization on or after January 1, 2019. The exemption for solar photovoltaic (electric energy) projects greater than 20 megawatts, as measured in alternating current (AC) generation capacity, shall not apply to projects upon which construction begins after January 1, 2024. Such property shall not include the land on which such equipment or facilities are located.

"State certifying authority" shall mean the State Water Control Board, for water pollution; the State Air Pollution Control Board, for air pollution; the Department of Mines, Minerals and Energy, for solar energy projects and for coal, oil, and gas production, including gas, natural gas, and coalbed methane gas; and the Virginia Waste Management Board, for waste disposal facilities, natural gas recovered from waste facilities, and landfill gas production facilities, and shall include any interstate agency authorized to act in place of a certifying authority of the Commonwealth.

2. That the Department of Mines, Minerals and Energy shall submit an interim report on the development of the regulations required by subdivision B 3 of § 58.1-3660 of the Code of Virginia, as amended by this act, by November 15, 2019.