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HOUSE BILL NO. 968

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 7, 2024)

(Patron Prior to Substitute—Delegate Lopez)

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 Authority; 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 Authority.

§ 2.2-2378. Virginia Clean Energy Innovation Authority.

The Virginia Clean Energy Innovation Authority is created as a public body corporate and as a political subdivision of the Commonwealth. The purpose of the Authority is to accelerate the deployment of clean energy projects, greenhouse gas emissions reduction projects, and other qualified projects through the strategic deployment of public and private 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:

"Authority" means the Virginia Clean Energy Innovation Authority.

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

"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.

"Department" means the Department of Energy.

"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.

"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 Authority 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 temporary or permanent basis.

"President" means the president of the Board of Directors of the Authority.

"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 noncarbon-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 consisting of 12 voting members. Members
63 shall be appointed as follows: two members of the House of Delegates, to be appointed by the Speaker
64 of the House of Delegates; one member of the Senate, to be appointed by the Senate Committee on
65 Rules; five nonlegislative citizen members to be appointed by the Governor, subject to approval by the
66 General Assembly, who shall be citizens of the Commonwealth and have expertise in real estate,
67 finance, or project development or legal expertise in zero-emission and low-emission energy generation,
68 infrastructure, transportation, agriculture, stormwater management, or housing; the Director of the
69 Department or his designee, who shall serve ex officio with voting privileges; the Director of the
70 Virginia Economic Development Partnership Authority or his designee, who shall serve ex officio with
71 voting privileges; the chief executive officer of the Virginia Innovative Nuclear Hub or his designee, who
72 shall serve ex officio with voting privileges; and the State Treasurer, or his designee, who shall serve ex
73 officio with voting privileges.

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

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

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

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

91 **§ 2.2-2381. Powers and duties of the president.**

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

100 **§ 2.2-2382. Powers and duties of the Authority.**

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

103 1. Sue and be sued, implead and be impleaded, complain and defend in all courts;
104 2. Adopt, use, and alter at will a common seal;
105 3. Acquire, purchase, hold, use, lease, or otherwise dispose of any real or personal property or any
106 interest therein;

107 4. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the
108 sale of products of, or services rendered by the Authority to pay its expenses;

109 5. Prepare and enter into contracts and agreements with any person or federal, state, or local
110 government agency;

111 6. Employ, at its discretion, such agents and employees as may be necessary, and to fix their
112 compensation to be payable from funds made available to the Authority. Such agents and employees
113 may reside within or outside of the Commonwealth and the United States and are not required to be
114 citizens of the Commonwealth. Legal services for the Authority shall be provided by the Attorney
115 General in accordance with Chapter 5 (§ 2.2-500 et seq.);

116 7. Apply for and accept gifts, grants, aid, and donations from any source to be expended in
117 furtherance of accomplishing the objectives of the Authority. All federal funding accepted under this
118 subdivision shall be accepted and expended by the Authority in accordance with such terms and
119 conditions as are prescribed by the United States and are consistent with state law, and all state
120 funding accepted under this subdivision shall be accepted and expended in accordance with such terms
121 and conditions as prescribed by the Commonwealth;

8. Adopt, alter, and repeal bylaws, rules, and regulations governing the transaction of the Authority's business, exercises of its powers, and performance of its duties; and

9. Seek to qualify as a State Energy Financing Institution.

B. In carrying out its powers and duties pursuant to this article, the Authority 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 incur no greenhouse gas emissions;

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

4. Strategically prioritize the use of the Authority'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 Authority'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 Authority 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 Authority'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 Authority;

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

10. Develop consumer protection standards governing the Authority'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 Authority'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 Authority's programs;

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);

14. Act 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; and

15. Ensure that Authority contracts with all third-party administrators, contractors, and subcontractors contain required covenants, representations, and warranties specifying that contracted third parties are agents of the Authority and that all acts of contracted third parties are considered acts of the Authority, 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 Authority 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 Authority 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 Authority's interest in a completed qualified project; and

4. Expend up to 25 percent of funds appropriated to the Authority 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. Authority lending practices; consumer protection.

A. In determining the projects in which the Authority will participate, the Authority shall give preference to projects that maximize the creation of high-quality employment and apprenticeship opportunities for local workers:

B. The Authority shall require, for all projects for which the Authority provides financing, that:

1. Financing is not offered without first ensuring that the participants meet the Authority's

183 underwriting criteria; and

184 2. Any loan made to a homeowner for a project on the homeowner's residence complies with all
185 applicable state and federal consumer lending laws.

186 **§ 2.2-2384. Strategic plan.**

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

194 B. Elements of the strategic plan shall be informed by the Authority's analysis of the market for
195 qualified projects and by the Authority's experience under the previous strategic plan, including the
196 degree to which performance targets were or were not achieved by each financing program. In addition,
197 the Authority shall actively seek input regarding activities that should be included in the strategic plan
198 from stakeholders, the general public, and participants, including via meetings required pursuant to
199 § 2.2-2386.

200 C. The Authority shall establish annual targets in a strategic plan for each financing program
201 regarding the number of projects, level of Authority investments, greenhouse gas emissions reductions,
202 and installed generating capacity or energy savings the Authority hopes to achieve.

203 D. The Authority's targets and strategies shall be designed to ensure that no less than 40 percent of
204 the direct benefits of Authority activities flow to Justice40 communities or other mandated recipients
205 where required as part of a federal grant program.

206 **§ 2.2-2385. Investment strategy; content; process.**

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

210 1. The types of qualified projects the Authority should focus on;

211 2. Gaps in current qualified project financing that present the greatest opportunities for successful
212 action by the Authority;

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

215 4. Financing tools that will be most effective in achieving the Authority's goals; and

216 5. Partnerships the Authority should establish with other organizations to increase the likelihood of
217 success.

218 B. In developing an investment strategy, the Authority shall consult, at a minimum, with similar
219 organizations in other states, lending authorities, state agencies, utilities, environmental and energy
220 policy nonprofits, and other organizations that can provide valuable advice on the Authority's activities.

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

222 1. Authority investments are not made solely to reduce private risk; and

223 2. Private financing entities do not unilaterally control the terms of investments to which the
224 Authority is a party.

225 D. The Board shall submit a draft long-term investment strategy for comment to each of the groups
226 and individuals with whom the Board consults pursuant to subsection B and to the General Assembly
227 and shall post the draft strategy on the Authority's website.

228 **§ 2.2-2386. Public outreach.**

229 The Authority shall:

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

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

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

239 **§ 2.2-2387. Form and audit of accounts and records.**

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

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

244 **§ 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 Authority and the undertaking of activities in furtherance of the purpose of the Authority constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the Authority 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 Authority, 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 Authority 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 Authority in the exercise of any power conferred under this article.

§ 2.2-2390. Annual report.

The Authority shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Authority 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 Authority.