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SENATE BILL NO. 729

Offered January 19, 2024

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 Climate Innovation Authority; established; report.

Patrons—Surovell; Delegate: Lopez

Referred to Committee on Local Government

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 Climate Innovation Authority.

§ 2.2-2378. Virginia Climate Innovation Authority.

The Virginia Climate 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 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 Climate Innovation Authority.

"Board" means the Board of Directors of the Virginia Climate 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.

"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.

"Environmental justice" has the same meaning as provided in § 2.2-234.

"Environmental justice community" has the same meaning as provided in § 2.2-234.

"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 basis.

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

"Prevailing wage rate" means the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of workers employed for the same work in the same trade or occupation in the locality in which the project is located, as determined by the Commissioner of Labor and Industry on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the federal Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended.

"Project labor agreement" means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific project.

"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 energy projects, energy storage systems, district heating, smart grid

59 technologies, or microgrid systems; (iv) replaces existing fossil-fuel-based technology with an end-use
60 electric technology; (v) supports the development and deployment of electric vehicle charging stations
61 and associated infrastructure, electric buses, and electric fleet vehicles; (vi) reduces water use or
62 protects, restores, or preserves the quality of the Commonwealth's surface waters or the Chesapeake
63 Bay; or (vii) incentivizes customers to shift demand in response to changes in the price of electricity or
64 when system reliability is not jeopardized.

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

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

69 "Smart grid" means a digital technology that allows for two-way communication between a utility
70 and the utility's customers and enables the utility to control power flow and load in real time.

71 **§ 2.2-2380. Board of directors; members; terms; compensation; president.**

72 A. The Authority shall be governed by a Board of Directors that shall have a total membership of 12
73 members that shall consist of two legislative members, five nonlegislative citizen members, and five ex
74 officio members. Members shall be appointed as follows: one member of the House of Delegates, to be
75 appointed by the Speaker of the House of Delegates; one member of the Senate, to be appointed by the
76 Senate Committee on Rules; five nonlegislative citizen members, one of whom shall be a representative
77 of a public electric utility or electric cooperative, one of whom shall be a representative of a community
78 bank or credit union, one of whom shall be a representative of an energy conservation organization, one
79 of whom shall be a representative of an environmental justice organization, and one of whom shall have
80 experience with investment fund management with expertise in clean energy technologies, to be
81 appointed by the Governor, subject to confirmation by the General Assembly. The Secretary of
82 Commerce and Trade, the Secretary of Finance, the Secretary of Transportation, the Secretary of Labor,
83 and the Director of the Department of Energy or their designees shall serve ex officio with voting
84 privileges. Nonlegislative citizen members of the Authority shall be citizens of the Commonwealth.

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

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

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

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

102 **§ 2.2-2381. Powers and duties of the president.**

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

111 **§ 2.2-2382. Powers and duties of the Authority.**

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

- 114 1. Sue and be sued, implead and be impleaded, complain and defend in all courts;
- 115 2. Adopt, use, and alter at will a common seal;
- 116 3. Acquire, purchase, hold, use, lease, or otherwise dispose of any real or personal property or any
117 interest therein;
- 118 4. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of, the
119 sale of products of, or services rendered by the Authority to pay its expenses;
- 120 5. Prepare and enter into contracts and agreements with any person or federal, state, or local

government agency;

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

7. Apply for and accept gifts, grants, aid, and donations from any source to be expended in furtherance of accomplishing the objectives of the Authority. All federal funding accepted under this subdivision shall be accepted and expended by the Authority in accordance with such terms and conditions as are prescribed by the United States and are consistent with state law, and all state funding accepted under this subdivision shall be accepted and expended in accordance with such terms 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 community development financial institution under 12 U.S.C. § 4702.

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 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, making an affirmative effort to recruit and hire a president and staff who are from, or share the interests of, the communities the Authority 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 Authority 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; 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

182 Authority via a loan loss reserve, loan guarantee, or other mechanism;

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

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

188 4. Expend up to 25 percent of funds appropriated to the Authority for start-up purposes, which may
189 be used for financing programs and project investments authorized under this article, prior to adoption
190 of the strategic plan required pursuant to § 2.2-2384 and the investment strategy required pursuant to
191 § 2.2-2385; and

192 5. Require a specific project to agree to implement a project labor agreement as a condition of
193 receiving financing from the Authority.

194 **§ 2.2-2383. Authority lending practices; labor and consumer protection.**

195 A. In determining the projects in which the Authority will participate, the Authority shall give
196 preference to projects that:

197 1. Maximize the creation of high-quality employment and apprenticeship opportunities for local
198 workers, consistent with the public interest, especially workers from environmental justice communities,
199 labor organizations, and Virginia communities hosting retired or retiring electric generation facilities,
200 including workers previously employed at retiring facilities;

201 2. Utilize energy technologies produced domestically that received an advanced manufacturing tax
202 credit under § 45X of the Internal Revenue Code, as allowed under the federal Inflation Reduction Act
203 of 2022, P.L. 117-169;

204 3. Certify, for all contractors and subcontractors, that the rights of workers to organize and unionize
205 are recognized; and

206 4. Agree to implement a project labor agreement.

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

208 1. If the budget is \$250,000 or more, all contractors and subcontractors are required to pay no less
209 than the prevailing wage rate;

210 2. Financing is not offered without first ensuring that the participants meet the Authority's
211 underwriting criteria; and

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

214 **§ 2.2-2384. Strategic plan.**

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

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

228 C. The Authority shall establish annual targets in a strategic plan for each financing program
229 regarding the number of projects, level of Authority investments, greenhouse gas emissions reductions,
230 and installed generating capacity or energy savings the Authority hopes to achieve, including separate
231 targets for Authority activities undertaken in environmental justice communities.

232 D. The Authority's targets and strategies shall be designed to ensure that no less than 40 percent of
233 the direct benefits of Authority activities flow to environmental justice communities.

234 **§ 2.2-2385. Investment strategy; content; process.**

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

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

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

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

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

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

6. How values of equity, environmental justice, and geographic balance can be integrated into all investment operations of the Authority.

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

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

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

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

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

§ 2.2-2386. Public outreach.

The Authority shall:

1. Maintain a public website that provides information about the Authority'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 Authority's products, programs, and services and key Authority events and decisions; and

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

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

A. The accounts and records of the Authority 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 Authority 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 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.