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HOUSE BILL NO. 2509

Offered January 13, 2025

Prefiled January 8, 2025

A *BILL to amend the Code of Virginia by adding in Chapter 17 of Title 45.2 an article numbered 10, consisting of sections numbered 45.2-1735 through 45.2-1744, relating to Virginia Clean Energy Innovation Board established; report.*

Patrons—Lopez, Anthony and Willett

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 17 of Title 45.2 an article numbered 10, consisting of sections numbered 45.2-1735 through 45.2-1744, as follows:

Article 10.

Virginia Clean Energy Innovation Board.

§ 45.2-1735. Definitions.

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

"Board" means the Virginia Clean Energy Innovation Board established in § 45.2-1736.

"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.

"Fund" means the Virginia Clean Energy Innovation Fund established in § 45.2-1737.

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

"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.

"Qualified project" means a project, technology, product, service, or measure promoting energy efficiency, clean energy, electrification, or water conservation and quality that (i) 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 and the utility's customers and enables the utility to control power flow and load in real time.

§ 45.2-1736. Virginia Clean Energy Innovation Board; members; terms; compensation.

A. The Virginia Clean Energy Innovation Board is established as a board within the Department to implement the provisions of this article and to approve expenditures and disbursements from the Virginia Clean Energy Innovation Fund.

B. The Board shall have a total membership of 12 members that includes nine nonlegislative citizen members and three ex officio members. Nonlegislative citizen members shall have expertise in real estate, finance, or project development, or legal expertise in zero-emission or low-emission energy generation, infrastructure, transportation, agriculture, storm water management, or housing and shall be appointed as follows: four members to be appointed by the Senate Committee on Rules, four members to be appointed by the Speaker of the House of Delegates, and one member to be appointed by the Governor. The Chief Executive Officer of the Virginia Economic Development Partnership Authority, the Secretary of Finance, and the Director, or their designees, shall serve ex officio with voting privileges. Nonlegislative citizen members shall be citizens of the Commonwealth.

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

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

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

§ 45.2-1737. Virginia Clean Energy Innovation Fund.

From such funds as appropriated, there is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Clean Energy Innovation Fund. The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for (i) the purposes of accelerating 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, including investments that would employ funds from the U.S. Department of Energy's Loan Program Office, and (ii) the administration of the Fund and the Board. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by (a) the Director upon approval by the Board for any expenditures and disbursements related to investments that would employ funds from the U.S. Department of Energy's Loan Program Office and (b) the Director for all other expenditures and disbursements.

§ 45.2-1738. Powers and duties of the Board.

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

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

2. 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 Board. 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 Board shall be provided by the Attorney General in accordance with Chapter 5 (§ 2.2-500 et seq.) of Title 2.2;

3. Apply for and accept gifts, grants, aid, and donations from any source to be expended in furtherance of accomplishing the objectives of the Board. All federal funding accepted under this subdivision shall be accepted and expended by the Board 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;

4. Adopt, alter, and repeal bylaws, rules, and regulations governing the transaction of the Board's business, exercise of its powers, and performance of its duties; and

5. 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 Board 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;

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

4. Strategically prioritize the use of the Fund 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 Fund is being used most effectively to add to and complement those programs;

6. Stimulate demand for qualified projects by (i) providing information to project participants about federal, state, local, utility, and other funding available through the Fund for qualifying projects and technical information on energy conservation and renewable energy measures; (ii) forming partnerships with

contractors and informing contractors about financing programs available through the Fund; and (iii) developing innovative marketing strategies to stimulate project owner interest;

7. Finance projects in all regions of the Commonwealth;

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

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

10. Develop consumer protection standards governing the Board's investments from the Fund 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 Board's activities, particularly on low-income communities and on greenhouse gas emissions reductions;

12. Hire sufficient staff with the appropriate skills and qualifications to carry out the Board's programs;

13. Apply for 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 Board 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 maximize benefits to Virginians;

15. Ensure that Board contracts with all third-party administrators, contractors, and subcontractors contain required covenants, representations, and warranties specifying that contracted third parties are agents of the Board and that all acts of contracted third parties are considered acts of the Board, 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 Board 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 Board 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; and

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 Board's interest in a completed qualified project.

§ 45.2-1739. Board lending practices; consumer protection.

The Board shall require, for all projects for which the Board provides financing through the Fund, that (i) financing is not offered without first ensuring that the participants meet the Board's underwriting criteria and (ii) any loan made to a homeowner for a project on the homeowner's residence complies with all applicable state and federal consumer lending laws.

§ 45.2-1740. Strategic plan.

A. By December 15, 2025, and each December 15 in odd-numbered years thereafter, the Board shall develop and adopt a strategic plan that prioritizes the Board's activities over the next two years. The strategic plan shall (i) develop specific programs to overcome market impediments through access to Board financing and technical assistance and (ii) develop outreach and marketing strategies designed to make potential project developers, participants, and communities aware of financing and technical assistance available from the Board.

B. Elements of the strategic plan shall be informed by the Board's analysis of the market for qualified projects and by the Board's experience under the previous strategic plan, including the degree to which performance targets were or were not achieved by each financing program.

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

§ 45.2-1741. Investment strategy; content; process.

A. No later than December 15, 2025, and every four years thereafter, the Board shall adopt a long-term investment strategy to ensure that the Board's paramount goal to reduce greenhouse gas emissions is reflected in all of the Board's operations. The investment strategy shall address:

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

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

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

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

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

and

181 6. How values of economic and geographic balance can be integrated into all investment operations of
182 the Board.

183 B. In developing an investment strategy, the Board shall consult, at a minimum, with similar
184 organizations in other states, lending authorities, state agencies, utilities, environmental and energy policy
185 nonprofits, and other organizations that can provide valuable advice on the Board's activities. The Board
186 shall coordinate with the Department of Environmental Quality and the Department of Conservation and
187 Recreation to identify and incorporate flood resilience and water quality projects into the investment
188 strategy.

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

190 1. Board investments from the Fund are not made solely to reduce private risk; and

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

193 **§ 45.2-1742. Public outreach.**

194 The Board shall:

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

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

201 **§ 45.2-1743. Exemption of Board from procurement procedures.**

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

204 **§ 45.2-1744. Annual report.**

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

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

221 **3. That the Virginia Clean Energy Innovation Bank (the Bank) established pursuant to subsection L of**
222 **Item 471 of Chapter 2 of the Acts of Assembly of 2024, Special Session I, shall be dissolved and the**
223 **Virginia Clean Energy Innovation Board (the Board), established by this act, shall be its successor.**
224 **Any powers and duties of the Bank shall be transferred to the Board. Any funds appropriated to or**
225 **received by the Bank shall be paid into the Virginia Clean Energy Innovation Fund, established**
226 **pursuant to § 45.2-1737 of the Code of Virginia, as created by this act. The Board shall assume any**
227 **liabilities, contracts, agreements, or obligations of the Bank and shall assume responsibility as primary**
228 **obligor, endorser, or guarantor on any outstanding bonds or other form of indebtedness issued by the**
229 **Bank and shall become a party to, and assume the obligations of, any indenture or loan agreement**
230 **underlying or issued in connection with any outstanding securities or debts. Any use of the term**
231 **Virginia Clean Energy Innovation Bank in a general appropriation act shall mean the Virginia Clean**
232 **Energy Innovation Fund or the Virginia Clean Energy Innovation Board, as created by this act.**