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SENATE BILL NO. 1373

Offered January 13, 2025

Prefiled January 13, 2025

A BILL to amend the Code of Virginia by adding in Title 56 a chapter numbered 31, consisting of sections numbered 56-626 through 56-633, relating to Energy Innovation Pilot Program established.

Patron—Suetterlein

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 56 a chapter numbered 31, consisting of sections numbered 56-626 through 56-633, as follows:

CHAPTER 31.**ENERGY INNOVATION PILOT PROGRAM.****§ 56-626. Energy Innovation Pilot Program established.**

A. As used in this chapter, unless the context requires a different meaning:

"Innovative energy project" or "project" means a project that employs innovative energy technology to generate energy, provide grid services, or provide other beneficial energy measures.

"Program" means the Energy Innovation Pilot Program established pursuant to this section.

B. The Energy Innovation Pilot Program is established to foster the development of innovative energy projects by allowing Program participants to provide grid services or other beneficial energy measures and for which the law and regulations pertaining to the generation, transmission, or distribution of electric energy for sale, including the Utility Facilities Act (§ 56-265.1 et seq.) and the Virginia Electric Utility Regulation Act (§ 56-576 et seq.), except for those laws and regulations that are required for worker safety, public safety, or environmental protection, are suspended for a period of five years. Such projects shall also receive priority status in any permitting processes in which they are required to undertake.

C. The Commission shall adopt regulations to implement the provisions of this chapter, including regulations to establish a schedule of fees for applications for participation in the Program. Such fees shall be used for the administration and operation of the Program.

§ 56-627. Application; requirements; process.

A. Any person who wishes to participate in the Program shall submit to the Commission an application in a form approved by the Commission together with a fee prescribed by the Commission. Such application shall demonstrate that the applicant has developed a plan and possesses the necessary resources, including personnel and financial resources, and expertise to test, monitor, and assess the innovative energy product or service, describe the innovative energy project, and provide any other relevant information required by the Commission. An applicant shall file a separate application for each innovative energy project the applicant seeks to execute in the Commonwealth.

B. An application shall include information regarding (i) how the innovative energy product or service is subject to licensing or other authorization requirements outside of the Program, including a specific list of all state laws, regulations, and other requirements that the applicant is seeking to have waived during the testing period; (ii) how the innovative energy project is different from energy products or services currently available to consumers in the Commonwealth; (iii) how the innovative energy project will benefit consumers in the Commonwealth; (iv) any risks to consumers in the Commonwealth posed by the innovative energy project; (v) how participating in the Program would enable a successful test of the innovative project; (vi) a description of the proposed testing plan, including estimated time periods for beginning the test and ending the test; and (vii) how the project will end and protect consumers and avoid negative grid impacts during and at the conclusion of the project.

C. The Commission may also require an applicant to provide (i) evidence of industry ratings and other past performance of the applicant and (ii) proof of sufficient assets, accounts, liability coverage, surety bond coverage, or other preparation by the applicant to ensure that consumers are protected and that the applicant will be able to meet ongoing obligations upon termination or completion of testing.

D. If an applicant has requested a waiver of any law, regulation, or other requirement enforced by an agency other than the Commission, the Commission shall consult with the agency responsible for enforcing such law, regulation, or other requirement and shall seek to obtain the consent of such agency for a waiver of such law, regulation, or requirement prior to approving an application submitted pursuant to this section.

E. In determining whether to approve applications received pursuant to this section, the Commission shall consider whether (i) certain licensure or other approval or regulatory requirements should not be waived even if the applicant is accepted into the Program; (ii) waiver of a specific state law, regulation, or other

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requirement would jeopardize the public health, safety, or welfare; (iii) the applicant has been convicted, entered a plea of nolo contendere, or entered into a plea of guilty or nolo contendere held in abeyance for a crime involving theft, fraud, or dishonesty or that bears a substantial relationship to the applicant's ability to safely or competently participate in the Program; and (iv) an agency of the Commonwealth has refused to consent to a waiver of law, regulation, or other requirement as specified in subsection D.

F. The Commission shall review each application submitted pursuant to this section and shall notify the applicant as to its decision no later than 90 days after the date on which the application was received by the Commission. The Commission may deny the application or approve the application in full or in part. If the Commission approves an application in full or in part, the Commission may also identify any additional state laws, regulations, and approvals that were not requested to be waived as part of the application if the Commission finds that such waivers are necessary to allow testing of the innovative energy project.

G. If the Commission denies an application, the Commission shall provide the applicant a written statement of the reason for the denial within the same 90-day period. The 90-day period for review of a completed application may be extended for up to an additional 90 days upon agreement of the applicant and the Commission.

§ 56-628. Application of laws.

A. Notwithstanding any other provision of law, for any application approved by the Commission in whole or in part, pursuant to § 56-627:

1. The Commission is authorized to and shall waive in writing any specific state law, regulation, or other requirement, including any specific state law, regulation, or other requirement enforced by a state agency other than the Commission provided the Commission has obtained such agency's consent pursuant to § 56-627, that was identified by a participant in the participant's application and approved by the Commission or included by the Commission in such approval. The Commission may apply conditions, including denial of grid interconnection, to a project approval order that it deems necessary to ensure that an approved project does not pose an undue risk to the reliability or security of energy service in the Commonwealth, including measures to address cybersecurity threats.

2. The participant that is testing an innovative energy project shall not be subject to state laws, regulations, licensing requirements, or authorization requirements that were identified by the participant in the participant's application and approved by the Commission and waived in writing by the Commission.

3. The participant, solely by way of being a participant in the Program, shall be deemed to possess an appropriate license or authorization under the laws of the Commonwealth for the purposes of any provision of federal law requiring state licensure or authorization for the duration of the testing period.

4. The participant shall be afforded priority status for any required permitting processes by state or local government with decisions rendered within the earliest reasonable timeframe.

B. The Commission and other state agencies consulted during the application process shall not be liable for any business losses or the recouping of application expenses related to the Program, including in the cases of (i) denying an applicant's application to participate in the Program for any reason or (ii) ending a participant's participation in the Program at any time.

C. No guaranty association in the Commonwealth shall be held liable for business losses or liabilities incurred as a result of Program-related activities undertaken by a participant.

D. Nothing in this chapter shall restrict (i) a participant who holds a license or other authorization in another jurisdiction from acting in accordance with that license or other authorization or (ii) a locality's authority over the siting of energy facilities.

E. No public utility shall be eligible to recover the costs of executing an innovative energy project through its rates for generation and distribution.

§ 56-629. Test period.

A. If the Commission approves an application under § 56-627, the participant may test the innovative energy project described in the participant's application for a period ending 60 months after the day on which the application was approved.

B. At least 30 days before the end of the Program testing period, a participant shall:

1. Notify the Commission that the participant will exit the Program, will discontinue the test, and will cease offering those particular innovative energy products or services for which the participant applied to the Program within 30 days after the testing period ends; or

2. Request an extension of the testing period for the purpose of obtaining a license or other authorization required by law. The Commission shall grant or deny a request for an extension by the end of the Program testing period. The Commission may grant an extension for not more than six months after the end of the Program testing period. The Commission may grant more than one extension; however, no testing period shall exceed 96 months. A participant that obtains an extension shall provide the Commission with a written report every three months that provides an update on efforts to obtain a license or other authorization required by law, including any submitted applications for licensure or other authorization, rejected applications, or issued licenses or other authorizations.

C. If the Commission does not receive notification as required in subsection B, the Program testing period

ends at the end of the 60-month testing period and the participant shall immediately stop offering each innovative energy project service being tested.

D. If an innovative energy project requires ongoing duties, the participant shall continue to fulfill those duties or arrange for another individual or business to fulfill those duties after the date on which the participant exits the Program.

E. If an innovative energy project fails before the end of the testing period, the participant shall notify the Commission and report on actions taken by the participant to ensure that consumers have not been harmed as a result of the failure.

§ 56-630. Suspension or revocation.

A. The Commission may suspend a participant's participation in the Program at any time if the Commission determines that continued testing of the innovative energy project constitutes a substantial danger to the public health, safety, or welfare, provided that (i) the testing period shall be tolled during such suspension and (ii) the Commission shall schedule an information conference pursuant to § 2.2-4019 to be held within a reasonable time of the date of suspension to address the substantial danger to the public health, safety, or welfare.

B. The Commission may revoke a participant's participation in the Program at any time if the Commission determines that (i) the participant is not operating in good faith to bring an innovative energy project to market in the Commonwealth; (ii) the participant fails or refuses to resolve a substantial danger to the public health, safety, or welfare; (iii) the innovative energy project constitutes a risk of or has resulted in actual harm to the public health, safety, or welfare; or (iv) a participant has engaged in, is in engaging in, or is about to engage in any practice or transaction that is in violation of this chapter or that constitutes a violation of a state or federal criminal law.

§ 56-631. Consumer protections.

A. A participant testing an innovative energy project within the Program is subject to the following:

1. Participating consumers shall be located in the Commonwealth;
2. The Commission may, on a case-by-case basis, limit the number of consumers that enter into an agreement with the participant to use the innovative energy project;
3. The Commission may, on a case-by-case basis, limit the number of customers served during the testing of an innovative energy project; and
4. The Commission may, on a case-by-case basis, specify minimum liability coverage and financial reserves that the participant shall meet during the testing of the innovative energy project.

B. Prior to providing an innovative energy project to a consumer, a participant shall disclose the following to the consumer:

1. The name and contact information of the participant;
2. That the innovative energy project is authorized pursuant to the Program;
3. That the innovative energy project is undergoing testing and may not function as intended, potentially exposing the consumer to risk;
4. That the provider of the innovative energy project is not immune from civil liability for any losses or damages caused by the innovative energy project;
5. That the Commonwealth does not endorse or recommend the innovative energy project;
6. That the offering of the innovative energy project is a temporary test that may be discontinued at the end of the testing period;
7. The expected end date of the testing period;
8. That a consumer may contact the Commission to file a complaint regarding the innovative energy project being tested and provide the Commission's telephone number and website address where a complaint may be filed; and
9. Such other disclosures as required by the Commission.

C. The disclosures required by subsection B shall be provided to a consumer in a clear and conspicuous manner and, for an Internet-based or application-based innovative energy project, a consumer shall acknowledge receipt of the disclosure before a transaction is completed.

§ 56-632. Investigations.

The Commission may conduct inspections and investigations in response to complaints regarding the innovative energy project. The Commission may also delegate inspection and investigation authority to an appropriate state agency. The identity of the complainant shall be confidential and shall not be open to inspection by members of the public. Nothing contained herein shall prevent the Commission, in its discretion, from disclosing to the participant the nature of the complaint or the identity of the consumer who is the subject of the complaint. If the Commission intends to rely, in whole or in part, on any statements made by the complainant at any administrative proceeding brought against the participant, the Commission shall disclose the identity of the complainant to the participant in a reasonable time in advance of such proceeding. No participant shall retaliate or discriminate in any manner against a person who (i) in good faith complains or provides information to or otherwise cooperates with the Commission or any other agency

182 or person or entity operating under any contract with an agency of government having responsibility for
183 protecting the rights of consumers or (ii) attempts to assert any right protected by state or federal law.

184 **§ 56-633. Recordkeeping and reporting requirements.**

185 A. A participant shall retain records, documents, and data produced in the ordinary course of business
186 regarding the innovative energy project tested in the Program.

187 B. The Commission shall establish quarterly reporting requirements for a participant, including
188 information about any customer complaints.

189 C. The Commission may request records, documents, and data from a participant and, upon such request,
190 a participant shall make such records, documents, and data available for inspection by the Commission.

191 D. By October 1 of each year, the Commission shall provide a report to the Commission on Electric
192 Utility Regulation and the Chairmen of the House Committee on Labor and Commerce and the Senate
193 Committee on Commerce and Labor that provides information regarding each Program participant and that
194 provides recommendations regarding the effectiveness of the Program.