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SENATE BILL NO. 823

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on _____)

(Patron Prior to Substitute—Senator Bagby)

A *BILL to amend and reenact § 54.1-1102 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 11 of Title 54.1 a section numbered 54.1-1117.1, relating to regulation of contractors; solar installation companies; sale, lease, or power purchase of solar energy systems; civil penalty.*

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-1102 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 11 of Title 54.1 a section numbered 54.1-1117.1 as follows:

§ 54.1-1102. Board for Contractors membership; offices; meetings; seal; record.

A. The Board for Contractors shall be composed of 16 members as follows: one member shall be a licensed Class A general contractor; the larger part of the business of one member shall be the construction of utilities; the larger part of the business of one member shall be the construction of commercial and industrial buildings; the larger part of the business of one member shall be the construction of single-family residences; the larger part of the business of one member shall be the construction of home improvements; one member shall be a subcontractor as generally regarded in the construction industry; one member shall be in the business of sales of construction materials and supplies; one member shall be a local building official; one member shall be a licensed plumbing contractor; one member shall be a licensed electrical contractor; one member shall be a licensed heating, ventilation and air conditioning contractor; one member shall be a certified elevator mechanic or a licensed elevator contractor; one member shall be a certified water well systems provider; one member shall be a professional engineer licensed in accordance with Chapter 4 (§ 54.1-400 et seq.); and two members shall be nonlegislative citizen members. The terms of the Board members shall be four years.

The Board shall meet at least once each year and at such other times as may be deemed necessary. Annually, the Board shall elect from its membership a chairman and a vice-chairman to serve for a one-year term. Nine members of the Board shall constitute a quorum.

B. The Board shall promulgate regulations not inconsistent with statute necessary for the licensure of contractors and tradesmen and the certification of backflow prevention device workers, and for the relicensure of contractors and tradesmen and for the recertification of backflow prevention device workers, after license or certificate suspension or revocation. The Board shall include in its regulations a requirement that as a condition for initial licensure as a contractor, the designated employee or a member of the responsible management personnel of the contractor shall have successfully completed a Board-approved basic business course, which shall not exceed eight hours of classroom instruction. In addition, the Board shall (i) require a contractor to appropriately classify all workers as employees or independent contractors, as provided by law and (ii) provide that any contractor who is found to have intentionally misclassified any worker is subject to sanction by the Board.

C. The Board ~~may~~ shall adopt regulations requiring all Class A, B, and C residential contractors, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to use legible written contracts including the following terms and conditions:

1. General description of the work to be performed;
2. Fixed price or an estimate of the total cost of the work, the amounts and schedule of progress payments, a listing of specific materials requested by the consumer and the amount of down payment;
3. Estimates of time of commencement and completion of the work; and
4. Contractor's name, address, office telephone number and license or certification number and class.

In transactions involving door-to-door solicitations, the Board may require that a statement of protections be provided by the contractor to the homeowner, consumer, or buyer, as the case may be.

D. *In transactions involving a sale, lease, or power purchase agreement for a solar energy system, the Board shall require specific contract provisions and disclosures relating to such sale, lease, or power purchase agreement that a solar installation company is required to include pursuant to § 54.1-1117.1. For the purposes of this subsection, "lease," "power purchase agreement," "solar energy system," and "solar installation company" have the same meanings as provided in § 54.1-1117.1.*

E. The Board shall adopt a seal with the words "Board for Contractors, Commonwealth of Virginia." The Director shall have charge, care, and custody of the seal.

~~E.~~ F. The Director shall maintain a record of the proceedings of the Board.

§ 54.1-1117.1. Sale, lease, or power purchase agreement for solar energy system; required provisions and disclosures; civil penalty.

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60 A. As used in this section:

61 "Lease" means an agreement that arranges for the design, permitting, and installation of a solar energy
62 system owned by a party other than the residential customer, in the form of a bailment or lease for the use of
63 personal property by an individual primarily for personal, family, or household purposes, for a period
64 exceeding four months and for a total contractual obligation not exceeding the applicable threshold amount,
65 whether or not the lessee has the option to purchase or otherwise become the owner of the property at the
66 expiration of the lease.

67 "Power purchase agreement" means a contract that arranges for the design, permitting, and installation
68 of a solar energy system owned by a party other than the residential customer where the electric energy
69 generated by the system is sold to the residential customer.

70 "Solar energy system" means a residential solar energy system mounted on a residential structure or
71 installed on the ground of a residential property.

72 "Solar installation company" means a licensee that contracts with residential customers to install
73 residential solar energy systems, or to install solar energy systems owned by third parties from which
74 customers lease solar energy systems or purchase electric energy generated by such systems. "Solar
75 installation company" does not include (i) a third-party owner of solar energy systems or a solar energy
76 system financing company that does not sell or install solar energy systems or (ii) individuals who self-install
77 solar energy systems.

78 B. Any sale, lease, or power purchase agreement for a solar energy system shall require the execution of
79 a written contract that includes the following in at least 10-point font:

80 1. The name, address, telephone number, email address, and state contractor license number of the solar
81 installation company and third party providing the lease, as applicable;

82 2. If the solar installation company will be using subcontractors known at the time the contract is
83 executed, the name, address, telephone number, email address, and state contractor license number, if
84 applicable, of each subcontractor used. If information on subcontractors is not available at the time of
85 executing the written contract, the installer shall be required to provide such information to the customer
86 within five business days of contracting with any subcontractor;

87 3. Information on the amounts and schedule for progress payments, including a specific statement of the
88 down payment amount;

89 4. Solar energy system design assumptions, including system size, estimated first year production,
90 estimated annual system production degradation, presence of energy storage, energy storage capacity,
91 maximum power output of energy storage, and energy storage model information. If there are equipment
92 substitutions that differ from the contracted system design, the solar installation company shall notify the
93 customer within five business days. A copy of any documents presented to the customer or purchaser using
94 solar energy system design assumptions, such as sales proposals, shall be provided at the same time as the
95 written contract;

96 5. Payment due dates, the manner in which the customer will receive invoices, and how to pay for the
97 lease of the solar energy system or the purchase of power from the solar energy system. No payment shall be
98 due from the customer to a third-party owner of a solar energy system until the solar energy system is
99 installed, has achieved permission to operate and interconnection, and is functioning;

100 6. Any one-time or recurring fees, including the circumstances triggering any late fees, estimated solar
101 energy system removal fees, Uniform Commercial Code notice removal and refiling fees, internet connection
102 fees, loan fees, dealer fees, program fees, buyer or seller points, and Automated Clearing House fees;

103 7. A description of all performance or production guarantees or estimates of performance or production;
104 and

105 8. The right to cancel the contract, without penalty, within five business days of contract execution.

106 C. A contract for the sale of a solar energy system shall list the total cost of the system, including the costs
107 of all equipment, the energy storage system, and other charges, as well as reasonable estimates of labor and
108 installation costs. Any adjustment to the total cost of the system after execution arising from equipment
109 substitutions, code or permitting requirements, interconnection requirements, or unforeseen site conditions
110 shall require a written change order signed by both parties before additional or modified work is performed.

111 D. A lease shall also include the following information:

112 1. The term and amount of monthly payments under the lease, including any payment increases and the
113 date of the first increase; and

114 2. The total number of payments and estimated payments over the term of the lease.

115 E. A power purchase agreement shall also include the following information:

116 1. The term and amount of monthly payments under the power purchase agreement, including any
117 payment increases and the date of the first increase;

118 2. Rates applicable for the first year under the power purchase agreement; and

119 3. The total number of payments and estimated payments over the term of the power purchase agreement.

120 F. Any sale, lease, or power purchase agreement for a solar energy system shall require the following
121 written disclosures in at least 10-point font:

1. Whether and to what extent maintenance and repairs are included, and any solar energy system maintenance costs for which the customer will be responsible.

2. "Comparable equipment may be installed. Such comparable equipment shall be substantially similar equipment to the proposed solar energy system and will not result in a reduction of the estimated first year production by more than five percent, a decrease in the solar energy system's kilowatts-AC and kilowatts-DC size, or an increase in the purchase price for the solar energy system."

3. A description of the workmanship warranty that covers repairs for any damage to the customer's residential property in connection with the solar energy system installation.

4. For a lease, whether the cost of removal of the solar energy system is included in the contract.

5. A brief description of the basis for any savings estimates that were provided to the customer or purchaser, with a copy of such savings estimates, which shall include the applicable electric utility rates for service, assumptions for increases to future rates for electric service, estimated solar energy system production, and the availability of programs that provide utility compensation for excess energy generated by the solar energy system at the time of contract execution.

6. Information concerning the retention and ownership of any renewable energy credits associated with the solar energy system.

7. The individual or entity responsible for obtaining electric interconnection approval for the solar energy system.

8. A notice that the customer or purchaser has the right to cancel the contract, without penalty, within five business days of contract execution, including the date and time at which such right expires and the method for canceling the contract.

9. The following statement: "The assumptions used to estimate savings such as utility rates may change. There may be fees and standby and demand charges that cannot be offset with solar energy, and excess electricity sent back to the grid may be credited at rates below what you pay for electricity. For further information regarding rates, you may contact your local utility or the State Corporation Commission. Tax and other state and federal incentives are subject to change or termination by executive, legislative, or regulatory action, which may impact savings estimates. Please read your contract carefully for more details."

10. If applicable, whether the owner or lessor of the solar energy system will be submitting a financing statement for the system. If a solar financing statement is submitted, the following statement shall also be included: "A solar loan, lease, or power purchase agreement may affect your ability to sell your home. A buyer may not be willing to assume such obligations, which may affect a home sale."

11. If applicable, information regarding transferability of the lease and any conditions for lease transfers in connection with a customer selling his home.

G. All disclosures required by subsection F shall be provided to the customer or purchaser either through a separate document, signed by the customer or purchaser prior to the execution of the written contract, or through disclosures that are included as a cover sheet to the written contract.

H. If the Board finds that a person has willfully engaged in an act or practice in violation of this section, the Board shall impose a civil penalty of no more than \$2,500 per violation to be remitted to the Low-to-Moderate Income Solar Loan and Rebate Fund established in § 45.2-1916. For the purposes of this subsection, prima facie evidence of a willful violation may be shown when the Board notifies the alleged violator in a manner that allows for confirmation of delivery that an act or practice is a violation of this chapter, and the alleged violator, after receipt of such notice, continues to engage in the act or practice.

2. That, by January 1, 2027, the Board for Contractors (the Board) shall adopt regulations and update existing regulations to implement the provisions of this act, including regulations issuing a disclosure form to be provided in any transaction involving installers for a sale, lease, or power purchase agreement for a residential solar energy system, as defined in § 54.1-1117.1 of the Code of Virginia, as created by this act, and guidance for licensees on how to address potential unknown costs related to structural changes or repairs needed to complete the installation that may be discovered after entering into the contract or after commencement of the installation.

3. That the provisions of the first enactment of this act shall become effective on January 1, 2027.