

HOUSE BILL NO. 968

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources

on _____)

(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 Climate 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 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 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 Climate Innovation Authority.

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

26 "Community navigator" means an organization that works to facilitate access to clean energy
27 project financing by individuals and community groups.

28 "Credit enhancement" means a pool of capital set aside to cover potential losses on loans and other
29 investments made by financing entities. "Credit enhancement" includes loan loss reserves and loan
30 guarantees.

31 "Energy storage system" means a system that absorbs, stores, and discharges electricity. "Energy
32 storage system" does not include fossil fuel storage or power-to-gas storage that directly uses fossil fuel
33 inputs.

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

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

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

38 "Loan loss reserves" means a pool of capital set aside to reimburse a private lender if a customer
39 defaults on a loan, up to an agreed-upon percentage of loans originated by the private lender.

40 "Local workers" means Virginia residents who permanently reside within 150 miles of the location
41 of a proposed project in which the Authority is considering to participate.

42 "Microgrid system" means an electrical grid that (i) serves a discrete geographical area from
43 distributed energy resources and (ii) can operate independently from the central electric grid on a
44 temporary basis.

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

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

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

54 "Qualified project" means a project, technology, product, service, or measure promoting energy
55 efficiency, clean energy, electrification, or water conservation and quality that (i) substantially reduces
56 greenhouse gas emissions; (ii) reduces energy use without diminishing the level of service; (iii) increases
57 the deployment of renewable energy projects, energy storage systems, district heating, smart grid
58 technologies, or microgrid systems; (iv) replaces existing fossil-fuel-based technology with an end-use
59 electric technology; (v) supports the development and deployment of electric vehicle charging stations
60 and associated infrastructure, electric buses, and electric fleet vehicles; (vi) reduces water use or protects,
61 restores, or preserves the quality of the Commonwealth's surface waters or the Chesapeake Bay; (vii)
62 incentivizes customers to shift demand in response to changes in the price of electricity or when system
63 reliability is not jeopardized; or (viii) supports infrastructure projects that assist individuals or
64 communities in adapting to changing climate or that assist individuals or communities in the recovery
65 from disruptions caused by changing climate conditions.

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

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

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

72 **§ 2.2-2380. Board of directors; members; terms; compensation; president.**

73 A. The Authority shall be governed by a Board of Directors that shall have a total membership of
74 12 members that shall consist of two legislative members, five nonlegislative citizen members, and five
75 ex officio members. Members shall be appointed as follows: one member of the House of Delegates, to
76 be appointed by the Speaker of the House of Delegates; one member of the Senate, to be appointed by the
77 Senate Committee on Rules; five nonlegislative citizen members, one of whom shall be a representative
78 of a public electric utility or electric cooperative, one of whom shall be a representative of a community

79 bank or credit union, one of whom shall be a representative of an energy conservation organization, one
80 of whom shall be a representative of an environmental justice organization, and one of whom shall have
81 experience with investment fund management with expertise in clean energy technologies, to be appointed
82 jointly by the General Assembly. The Secretary of Commerce and Trade, the Secretary of Finance, the
83 Secretary of Transportation, the Secretary of Labor, and the Director of the Department of Energy or their
84 designees shall serve ex officio with voting privileges. Nonlegislative citizen members of the Authority
85 shall be citizens of the Commonwealth.

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

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

95 D. The Board shall annually elect a chairman and vice-chairman from among its nonlegislative
96 citizen members. A majority of the members shall constitute a quorum for the transaction of the Board's
97 business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights and
98 perform all duties of the Board. The Board shall meet at least quarterly or at the call of the 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 him
101 by the Board, provided that any person appointed to serve as president shall have at least five years of
102 demonstrated experience in the financing of qualified projects.

103 **§ 2.2-2381. Powers and duties of the president.**

104 The president shall employ or retain such agents or employees as may be necessary to fulfill the
105 duties of the Authority conferred upon the president, subject to the Board's approval. Employees of the

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

112 **§ 2.2-2382. Powers and duties of the Authority.**

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

- 115 1. Sue and be sued, implead and be impleaded, complain and defend in all courts;
- 116 2. Adopt, use, and alter at will a common seal;
- 117 3. Acquire, purchase, hold, use, lease, or otherwise dispose of any real or personal property or any
118 interest therein;
- 119 4. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of property of,
120 the sale of products of, or services rendered by the Authority to pay its expenses;
- 121 5. Prepare and enter into contracts and agreements with any person or federal, state, or local
122 government agency;
- 123 6. Employ, at its discretion, such agents and employees as may be necessary, and to fix their
124 compensation to be payable from funds made available to the Authority. Such agents and employees may
125 reside within or outside of the Commonwealth and the United States and are not required to be citizens of
126 the Commonwealth. Legal services for the Authority shall be provided by the Attorney General in
127 accordance with Chapter 5 (§ 2.2-500 et seq.);
- 128 7. Apply for and accept gifts, grants, aid, and donations from any source to be expended in
129 furtherance of accomplishing the objectives of the Authority. All federal funding accepted under this
130 subdivision shall be accepted and expended by the Authority in accordance with such terms and conditions
131 as are prescribed by the United States and are consistent with state law, and all state funding accepted

132 under this subdivision shall be accepted and expended in accordance with such terms and conditions as
133 prescribed by the Commonwealth;

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

136 9. Seek to qualify as a community development financial institution under 12 U.S.C. § 4702.

137 B. In carrying out its powers and duties pursuant to this article, the Authority shall:

138 1. Serve as a financial resource to reduce the upfront and total costs of implementing qualified
139 projects;

140 2. Ensure that all financed projects reduce greenhouse gas emissions, increase the deployment of
141 renewable energy, or enhance climate resilience for individuals or communities;

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

143 4. Strategically prioritize the use of the Authority's funds to leverage private investment in
144 qualified projects, with the aim of achieving a high ratio of private to public money invested through
145 funding mechanisms that support, enhance, and complement private lending and investment;

146 5. Coordinate with existing federal, state, local, utility, and other programs to ensure that the
147 Authority's resources are being used most effectively to add to and complement those programs;

148 6. Stimulate demand for qualified projects by (i) contracting with the Department to provide,
149 including through subcontracts with community navigators, information to project participants about
150 federal, state, local, utility, and other Authority financial assistance for qualifying projects and technical
151 information on energy conservation and renewable energy measures; (ii) forming partnerships with
152 contractors and informing contractors about the Authority's financing programs; (iii) developing
153 innovative marketing strategies to stimulate project owner interest, especially in underserved
154 communities; and (iv) incentivizing financing entities to increase activity in underserved markets;

155 7. Finance projects in all regions of the Commonwealth;

156 8. Develop participant eligibility standards and other terms and conditions for financial support
157 provided by the Authority;

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

160 10. Develop consumer protection standards governing the Authority's investments to ensure that
161 financial support is provided responsibly and transparently and is in the financial interest of participating
162 project owners;

163 11. Develop methods to accurately measure the impact of the Authority's activities, particularly on
164 low-income communities and on greenhouse gas emissions reductions;

165 12. Hire a president and sufficient staff with the appropriate skills and qualifications to carry out
166 the Authority's programs, making an affirmative effort to recruit and hire a president and staff who are
167 from, or share the interests of, the communities the Authority is required to serve;

168 13. Apply for, either as a direct or subgrantee applicant, and accept all eligible sources of federal
169 funding, including the Greenhouse Gas Reduction Fund grants authorized by the federal Clean Air Act,
170 42 U.S.C. § 7434(a). To the extent practicable, applications for these funds by or on behalf of the Authority
171 shall be made in coordination with other Virginia applicants;

172 14. Acting under its powers as a state energy financing institution under 42 U.S.C. § 16511,
173 collaborate with the U.S. Department of Energy Loan Programs Office to ensure that authorities made
174 available under the federal Inflation Reduction Act of 2022, P.L. 117-169, maximally benefit Virginians;
175 and

176 15. Ensure that Authority contracts with all third-party administrators, contractors, and
177 subcontractors contain required covenants, representations, and warranties specifying that contracted third
178 parties are agents of the Authority and that all acts of contracted third parties are considered acts of the
179 Authority, provided that the act is within the contracted scope of work; and

180 16. Undertake such other activities as are necessary to carry out the provisions of this article.

181 C. In carrying out its powers and duties pursuant to this article, the Authority may:

182 1. Employ credit enhancement mechanisms that reduce financial risk for financing entities by
183 providing assurance that a limited portion of a loan or other financial instrument is assumed by the
184 Authority via a loan loss reserve, loan guarantee, or other mechanism;

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

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

190 4. Expend up to 25 percent of funds appropriated to the Authority for start-up purposes, which
191 may be used for financing programs and project investments authorized under this article, prior to adoption
192 of the strategic plan required pursuant to § 2.2-2384 and the investment strategy required pursuant to §
193 2.2-2385; and

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

196 **§ 2.2-2383. Authority lending practices; labor and consumer protection.**

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

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

203 2. Utilize energy technologies produced domestically that received an advanced manufacturing tax
204 credit under § 45X of the Internal Revenue Code, as allowed under the federal Inflation Reduction Act of
205 2022, P.L. 117-169;

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

208 4. Agree to implement a project labor agreement.

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

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

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

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

216 **§ 2.2-2384. Strategic plan.**

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

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

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

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

236 **§ 2.2-2385. Investment strategy; content; process.**

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

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

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

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

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

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

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

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

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

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

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

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

263 § 2.2-2386. Public outreach.

264 The Authority shall:

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

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

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

274 **§ 2.2-2387. Form and audit of accounts and records.**

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

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

279 **§ 2.2-2388. Exemption from taxes or assessments.**

280 The exercise of the powers granted by this article shall be in all respects for the benefit of the
281 people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement
282 of their health and living conditions, and as the operation and maintenance of projects by the Authority
283 and the undertaking of activities in furtherance of the purpose of the Authority constitute the performance
284 of essential governmental functions, the Authority shall not be required to pay any taxes or assessments
285 upon any project or any property acquired or used by the Authority under the provisions of this article or
286 upon the income therefrom, including sales and use taxes on tangible personal property used in the
287 operations of the Authority, and shall at all times be free from state and local taxation. The exemption
288 granted in this section shall not be construed to extend to persons conducting on the premises of a facility
289 businesses for which local or state taxes would otherwise be required.

290 **§ 2.2-2389. Exemption of Authority from personnel and procurement procedures.**

291 The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the Virginia Public
292 Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any power
293 conferred under this article.

294 **§ 2.2-2390. Annual report.**

295 The Authority shall submit to the Governor and the General Assembly an annual executive
296 summary of the interim activity and work of the Authority no later than the first day of each regular session
297 of the General Assembly. The executive summary shall be submitted as a report document as provided in
298 the procedures of the Division of Legislative Automated Systems for the processing of legislative
299 documents and reports and shall be posted on the General Assembly's website. The executive summary
300 shall include information regarding efforts supported by the Authority.

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