

# VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

## CHAPTER 688

*An Act to amend and reenact § 10.1-1197.6 of the Code of Virginia, relating to small renewable energy projects; impact on natural resources.*

[H 206]

Approved April 11, 2022

**Be it enacted by the General Assembly of Virginia:**

**1. That § 10.1-1197.6 of the Code of Virginia is amended and reenacted as follows:**

**§ 10.1-1197.6. Permit by rule for small renewable energy projects.**

A. Notwithstanding the provisions of § 10.1-1186.2:1, the Department shall develop, by regulations to be effective as soon as practicable, but not later than July 1, 2012, a permit by rule or permits by rule if it is determined by the Department that one or more such permits by rule are necessary for the construction and operation of small renewable energy projects, including such conditions and standards necessary to protect the Commonwealth's natural resources. If the Department determines that more than a single permit by rule is necessary, the Department initially shall develop the permit by rule for wind energy, which shall be effective as soon as practicable, but not later than January 1, 2011. Subsequent permits by rule regulations shall be effective as soon as practicable.

B. The conditions for issuance of the permit by rule for small renewable energy projects shall include:

1. A notice of intent provided by the applicant, to be published in the Virginia Register, that a person intends to submit the necessary documentation for a permit by rule for a small renewable energy project;

2. A certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;

3. Copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project;

4. A copy of the final interconnection agreement between the small renewable energy project and the regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the Department. The Department shall forward a copy of the agreement or study to the State Corporation Commission;

5. A certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the small renewable energy project by (i) an electrical generation facility that generates electricity only from sunlight or wind as designed does not exceed 150 megawatts; (ii) an electrical generation facility that generates electricity only from falling water, wave motion, tides, or geothermal power as designed does not exceed 100 megawatts; or (iii) an electrical generation facility that generates electricity only from biomass, energy from waste, or municipal solid waste as designed does not exceed 20 megawatts;

6. An analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

7. Where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months. *For prime agricultural soils and forest land, that analysis shall be required if a proposed project would disturb more than 10 acres of prime agricultural soils or 50 acres of contiguous forest lands, or if it would disturb forest lands enrolled in a program for forestry preservation pursuant to subdivision 2 of § 58.1-3233;*

8. If the Department determines that the information collected pursuant to subdivision B 7 indicates that significant adverse impacts to wildlife ~~or~~, historic resources, *prime agricultural soils, or forest lands* are likely, the submission of a mitigation plan, *if a draft plan was not provided by the applicant as part of the initial application, with a 45-day public comment period* detailing reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions. *A project will be deemed to have a significant adverse impact if it would disturb more than 10 acres of prime agricultural soils or 50 acres of contiguous forest lands, or if it would disturb forest lands enrolled in a program for forestry preservation pursuant to subdivision 2 of § 58.1-3233;*

9. A certification signed by a professional engineer licensed in Virginia that the small renewable energy project is designed in accordance with all of the standards that are established in the regulations

applicable to the permit by rule;

10. An operating plan describing how any standards established in the regulations applicable to the permit by rule will be achieved;

11. A detailed site plan with project location maps that show the location of all components of the small renewable energy project, including any towers. Changes to the site plan that occur after the applicant has submitted an application shall be allowed by the Department without restarting the application process, if the changes were the result of optimizing technical, environmental, and cost considerations, do not materially alter the environmental effects caused by the facility, or do not alter any other environmental permits that the Commonwealth requires the applicant to obtain;

12. A certification signed by the applicant that the small renewable energy project has applied for or obtained all necessary environmental permits;

13. A requirement that the applicant hold a public meeting. The public meeting shall be held in the locality or, if the project is located in more than one locality in a place proximate to the location of the proposed project. Following the public meeting, the applicant shall prepare a report summarizing the issues raised at the meeting, including any written comments received. The report shall be provided to the Department; and

14. A 30-day public review and comment period prior to authorization of the project.

C. The Department's regulations shall establish a schedule of fees, to be payable by the owner or operator of the small renewable energy project regulated under this article, which fees shall be assessed for the purpose of funding the costs of administering and enforcing the provisions of this article associated with such operations including, but not limited to, the inspection and monitoring of such projects to ensure compliance with this article.

D. The owner or operator of a small renewable energy project regulated under this article shall be assessed a permit fee in accordance with the criteria set forth in the Department's regulations. Such fees shall include an additional amount to cover the Department's costs of inspecting such projects.

E. The fees collected pursuant to this article shall be used only for the purposes specified in this article and for funding purposes authorized by this article to abate impairments or impacts on the Commonwealth's natural resources directly caused by small renewable energy projects.

F. There is hereby established a special, nonreverting fund in the state treasury to be known as the Small Renewable Energy Project Fee Fund, hereafter referred to as the Fund. Notwithstanding the provisions of § 2.2-1802, all moneys collected pursuant to this § 10.1-1197.6 shall be paid into the state treasury to the credit of the Fund. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it. The Fund shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

G. After the effective date of regulations adopted pursuant to this section, no person shall erect, construct, materially modify or operate a small renewable energy project except in accordance with this article or Title 56 if the small renewable energy project was approved pursuant to Title 56.

H. Any small renewable energy project shall be eligible for permit by rule under this section if the project is proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56.

I. Any small renewable energy project commencing operations after July 1, 2017, shall be eligible for permits by rule under this section and is exempt from State Corporation Commission environmental review or permitting in accordance with subsection B of § 10.1-1197.8 or other applicable law if the project is proposed, developed, constructed, or purchased by:

1. A public utility if the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge under § 56-249.6, or a rate adjustment clause under subdivision A 6 of § 56-585.1; or

2. A utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56.

J. *For purposes of this section, "prime agricultural soils" means soils recognized as prime farmland by the U.S. Department of Agriculture, and "forest land" has the same meaning as provided in § 10.1-1178, except that any parcel shall be considered forest lands if it was forested at least two years prior to the Department's receipt of a permit application.*

**2. That pursuant to subdivisions B 7 and 8 of § 10.1-1197.6 of the Code of Virginia, as amended by this act, the Department of Environmental Quality (the Department), in consultation with the Department of Forestry, the State Corporation Commission, the Department of Energy, the Virginia Economic Development Partnership Authority, and other relevant stakeholders, shall convene an advisory panel to assist in further developing regulations regarding criteria to determine if a significant adverse impact to prime agricultural soils or forest lands is likely to occur as a result of a proposed solar project that is a small renewable energy project and criteria for an applicant of a solar project to address in a plan to mitigate any significant adverse impacts to soils and lands. In developing regulations regarding plans to mitigate any significant impacts to prime agricultural soils or forest lands, the advisory panel shall consider, but not be limited to, the**

following factors in determining appropriate mitigation techniques or criteria to be included in an applicant's mitigation plan: (i) the mitigation techniques to avoid, minimize, or otherwise mitigate any such impacts; (ii) the cost of mitigation relative to the project cost, including the costs of proposed mitigation to rate payers; (iii) onsite minimization of impacts; (iv) payment of in-lieu fee funds for mitigation; (v) the impact on the local agricultural or forestry economy when such soils or lands are displaced; (vi) the loss of ecosystem benefits; (vii) noncompliance with Virginia's Watershed Implementation Plan III goals on the Chesapeake Bay TMDL; and (viii) noncompliance with other water quality criteria and standards. Such criteria shall include reasonable actions to be taken by the applicant to avoid, minimize, or otherwise mitigate any such impacts to prime agricultural soils or forest lands, but in the event that avoidance by the applicant is not reasonable, the applicant for the solar project that is a small renewable energy project shall be afforded the opportunity to minimize or otherwise mitigate any significant adverse impacts to prime agricultural soils or forest lands. The advisory panel shall also consider a process by which an applicant may satisfy its mitigation obligations by agreement with a locality if such mitigation requirements conform to the regulations established by the Department pursuant to this enactment and when such mitigation requirements are included in (a) a siting agreement and approved by a local governing body pursuant to subsection B of § 15.2-2316.7 of the Code of Virginia or (b) zoning use conditions approved by the locality pursuant to § 15.2-2288.8 of the Code of Virginia. The Department shall adopt such final regulations no later than December 31, 2024. Relevant stakeholders shall include but not be limited to representatives from the Virginia Association of Counties, the Virginia Farm Bureau Federation, the Virginia Agribusiness Council, the Virginia Forestry Association, the Piedmont Environmental Council, The Nature Conservancy, the Virginia Forest Products Association, the Chesapeake Solar and Storage Association, the American Clean Power Association, Advanced Energy Economy, AES Corporation, the Data Center Coalition, solar project engineers, electric utilities, and other stakeholders deemed relevant by the Department, the Department of Forestry, the Department of Energy, the State Corporation Commission, or the Virginia Economic Development Partnership Authority. The advisory panel shall submit a report to the Governor and the Chairmen of the House Committees on Agriculture, Chesapeake and Natural Resources and Commerce and Energy and the Senate Committees on Agriculture, Conservation and Natural Resources and Commerce and Labor no later than December 1, 2022.

3. That the provisions of the first enactment of this act shall become effective immediately upon the adoption of regulations pursuant to the second enactment of this act.

4. That any small renewable energy project for which an initial interconnection request application has been received and accepted by the regional transmission organization or electric utility by December 31, 2024, shall not be subject to the provisions of this act.