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HOUSE BILL NO. 1171

Offered January 14, 2022

A BILL to amend the Code of Virginia by adding in Chapter 17 of Title 45.2 an article numbered 9, consisting of sections numbered 45.2-1734 through 45.2-1742, relating to the Commonwealth Clean Energy Finance Authority; established.

Patron—Kory

Committee Referral Pending

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 9, consisting of sections numbered 45.2-1734 through 45.2-1742, as follows:

*Article 9.**Commonwealth Clean Energy Finance Authority.***§ 45.2-1734. Definitions.**

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

"Administrative costs" means the costs associated with salary and benefits of all personnel, office supplies, information technology, utilities, and office space used by the Authority. "Administrative costs" includes expenses incurred in carrying out a trust indenture. "Administrative costs" does not include costs associated with lending, portfolio management, and spending on mission-oriented projects and programs.

"Authority" means the Commonwealth Clean Energy Finance Authority established in § 45.2-1735.

"Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by the Authority pursuant to this article.

"Capital base" means the total capitalization of the Fund, including public and private funds, available at any given point in time for the financing activities of the Authority.

"Clean energy project" means a project approved by the Authority that increases the utilization of energy efficiency programs or renewable energy as those terms are defined in § 56-576, energy storage systems as that term is defined in § 58.1-3660, electrification of buildings, or low-carbon transportation systems.

"Fund" means the Commonwealth Clean Energy Finance Authority Fund established in § 45.2-1740.

"Resiliency project" means a project approved by the Authority for managing the impacts of extreme weather events, including extreme heat and flooding, with a preference for natural or nature-based features and living shorelines as defined in § 28.2-104.1.

§ 45.2-1735. Commonwealth Clean Energy Finance Authority established; purpose.

A. The Commonwealth Clean Energy Finance Authority is established as a political subdivision of the Commonwealth. The purpose of the Authority is to increase private investment in clean energy and resiliency projects in the Commonwealth. The Authority may consult with research institutions, businesses, nonprofit organizations, and stakeholders as the Authority deems appropriate. The Authority shall have only those powers enumerated in this article.

B. The Authority shall ensure that the projects and programs financed pursuant to this article complement the goals of the Plan and programs implemented by the Department, Department of Housing and Community Development, Department of Conservation and Recreation, and other relevant public and private entities. At least 40 percent of the resources deployed through the Authority shall be directed to historically economically disadvantaged communities, as defined in § 56-576.

C. The Authority shall issue guidelines that specify borrower eligibility, terms and conditions of support, and other relevant criteria, standards, or procedures prior to making or offering any loans, loan guarantees, credit enhancements, bonds, or other financing mechanisms for projects and programs.

§ 45.2-1736. Membership; terms; vacancies; expenses.

A. The Authority shall have a total membership of 11 members that shall consist of nine appointed nonlegislative citizen members and two ex officio members. All members of the Authority shall be citizens of the Commonwealth. Nonlegislative citizen members shall have expertise in one or more of the following areas: affordable housing project development and financing, clean energy, climate resilience, environmental justice, or community development. Nonlegislative citizen members shall be appointed as follows:

1. Four nonlegislative citizen members to be appointed by the Speaker of the House of Delegates;
2. Three nonlegislative citizen members to be appointed by the Senate Committee on Rules; and
3. Two nonlegislative citizen members to be appointed by the Governor.

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59 *The Director of the Department and the Director of the Department of Housing and Community*
60 *Development or their designees shall serve ex officio with voting privileges.*

61 *B. Except as otherwise provided in this article, all appointments shall be for terms of four years*
62 *each. No member shall be eligible to serve more than two successive four-year terms. After expiration of*
63 *an initial term of three years or less, two additional four-year terms may be served by such member if*
64 *appointed thereto. Appointments to fill vacancies, other than by expiration of a term, shall be made for*
65 *the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as the*
66 *original appointment. The remainder of any term to which a member is appointed to fill a vacancy shall*
67 *not constitute a term in determining the member's eligibility for reappointment.*

68 *C. The Authority shall appoint from its membership a chairman and a vice-chairman, each of whom*
69 *shall serve in such capacity at the pleasure of the Authority. The chairman, or in his absence the*
70 *vice-chairman, shall preside at each meeting of the Authority. The meetings of the Authority shall be*
71 *held on the call of the chairman or whenever a majority of the members so request. A majority of*
72 *members of the Authority serving at any one time shall constitute a quorum for the transaction of*
73 *business.*

74 *D. Members shall serve without compensation. However, all members may be reimbursed for all*
75 *reasonable and necessary expenses incurred in the performance of their duties as provided in*
76 *§§ 2.2-2813 and 2.2-2825. Such expenses shall be paid from the Fund.*

77 *E. The Authority shall appoint a chief executive officer who shall serve at the pleasure of the*
78 *Authority and receive such compensation as shall be fixed by the Authority. The chief executive officer*
79 *shall administer, manage, and direct the affairs and activities of the Authority in accordance with the*
80 *policies, control, and direction of the Board. The chief executive officer shall be a resident of the*
81 *Commonwealth within 180 days of his appointment.*

82 *F. Members of the Authority and its chief executive officer shall be subject to the standards of*
83 *conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and*
84 *may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct*
85 *in the manner set forth therein.*

86 *G. Except as otherwise provided in this article, members of the Authority and its staff shall be*
87 *subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

88 **§ 45.2-1737. General powers and duties of the Authority.**

89 *In addition to such other powers and duties established under this article, the Authority shall have*
90 *the power and duty to:*

91 1. *Adopt, use, and alter at will an official seal;*

92 2. *Make bylaws for the management and regulation of its affairs;*

93 3. *Maintain an office at such place or places within the Commonwealth as it may designate;*

94 4. *Sue and be sued in its own name;*

95 5. *Make and execute contracts and all other instruments and agreements necessary or convenient for*
96 *the performance of its duties and the exercise of its powers and functions under this article;*

97 6. *Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part*
98 *of its properties and assets;*

99 7. *Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or*
100 *bequeathed to the Authority, absolutely or in trust, from any source, public or private, for the purposes*
101 *for which the Authority is created;*

102 8. *Make and execute contracts and all other instruments and agreements necessary or convenient for*
103 *the exercise of its powers and functions;*

104 9. *Borrow money and issue bonds and notes or other evidences of indebtedness thereof as*
105 *hereinafter provided;*

106 10. *Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial*
107 *experts, investment bankers, superintendents, managers, and such other employees and agents as may be*
108 *necessary and fix their compensation to be payable from funds made available to the Authority;*

109 11. *Invest its funds as permitted by applicable law;*

110 12. *Receive and accept from any federal or private agency, foundation, corporation, association, or*
111 *person grants, donations of money, or real or personal property for the benefit of the Authority, and*
112 *receive and accept from the Commonwealth or any state, and from any municipality, county, or other*
113 *political subdivision thereof and any other source, aid or contributions of either money, property, or*
114 *other things of value, to be held, used, and applied for the purposes for which such grants and*
115 *contributions may be made;*

116 13. *Enter into agreements with any department, agency, or instrumentality of the United States or of*
117 *the Commonwealth and with lenders and enter into loans with contracting parties for the purpose of*
118 *planning, regulating, and providing for the financing or assisting in the financing of any clean energy*
119 *or resiliency project;*

120 14. *Charge reasonable interest, fees, and charges in connection with making and servicing its loans,*

including bonds, and in connection with providing technical, consultative, and project assistance services;

15. Do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied;

16. Provide technical assistance in the development or operation of clean energy and resiliency projects and programs and gather and distribute data and information concerning the need in the Commonwealth for such projects and programs;

17. To the extent permitted under its contracts with bond holders of the Authority, consent to any modification with respect to rate of interest, time and payment of any installment of principal or interest, security or any other term of any contract, loan, loan commitment, or contract or agreement of any kind to which the Authority is a party; and

18. Establish funds and reserves to provide additional security for loans provided for clean energy and resiliency projects and programs.

§ 45.2-1738. Notes and bonds.

A. 1. The Authority shall have power and is hereby authorized to issue from time to time its negotiable notes and bonds in conformity with applicable provisions of the Uniform Commercial Code in such principal amount as the Authority shall determine to be necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the Authority, establishment of reserves to secure such notes and bonds, and all other expenditures of the Authority incident to and necessary or convenient to carry out its corporate purposes and powers. In accordance with § 2.2-5002, such power to issue notes and bonds shall not be restricted or limited solely because the interest on the notes and bonds is subject, in whole or in part, directly or indirectly, to federal income taxes.

2. The Authority shall have the power, from time to time, to issue (i) notes to renew notes and (ii) bonds, to pay notes, including the interest thereon, and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes. The refunding bonds may be (a) exchanged for the bonds to be refunded or (b) sold and the proceeds applied to the purchase, redemption, or payment of such bonds.

3. Except as may otherwise be expressly provided by the Authority, every issue of its notes and bonds shall be general obligations of the Authority payable out of any revenues or moneys of the Authority, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

B. The notes and bonds shall be authorized by resolution of the Authority, shall bear such date or dates, and shall mature at such time or times as such resolution may provide, except that no bond shall mature more than 50 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place, and be subject to such terms of redemption as such resolution may provide. The notes and bonds of the Authority may be sold by the Authority, at public or private sale, at such price or prices as the Authority shall determine.

C. The bonds of the Authority shall be and are hereby declared to be legal and authorized investments legal investments in which public officers and public bodies of the Commonwealth, insurance companies and associations and other persons carrying on an insurance business, banks, bankers, banking institutions including savings and loan associations, building and loan associations, trust companies, savings banks and savings associations, investment companies and other persons carrying on a banking business, administrators, guardians, executors, trustees, and other fiduciaries and other persons authorized to invest in bonds or in other obligations of the Commonwealth, may legally invest funds, including capital, in their control. The bonds also shall be and are hereby declared to be securities that legally may be deposited with and received by public officers and public bodies of the Commonwealth or any agency of the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth is authorized by law.

D. Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of any contract with the holders thereof, as to:

1. Pledging all or any part of the revenues to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;

2. Pledging all or any part of the assets of the Authority, including mortgages and obligations securing the same, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;

3. The use and disposition of the gross income from mortgages owned by the Authority and payment

182 of principal of mortgages owned by the Authority;

183 4. The setting aside of reserves or sinking funds and the regulation and disposition thereof;

184 5. Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and
185 pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

186 6. Limitations on the issuance of additional notes or bonds; the terms upon which additional notes
187 or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;

188 7. The procedure, if any, by which the terms of any contract with noteholders or bondholders may be
189 amended or abrogated, the amount of notes or bonds the holders of which must consent thereto; and the
190 manner in which such consent may be given;

191 8. Limitations on the amount of moneys to be expended by the Authority for operating expenses of
192 the Authority;

193 9. Vesting in a trustee or trustees such property, rights, powers and duties in trust as the Authority
194 may determine, which may include any or all of the rights, powers and duties of the trustee appointed
195 by the bondholders pursuant to this article and limiting or abrogating the right of the bondholders to
196 appoint a trustee under this article or limiting the rights, powers and duties of such trustee;

197 10. Defining the acts or omissions to act which shall constitute a default in the obligations and
198 duties of the Authority to the holders of the notes or bonds and providing for the rights and remedies of
199 the holders of the notes or bonds in the event of such default, including as a matter of right the
200 appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent
201 with the general laws of the Commonwealth and the other provisions of this article;

202 11. Any other matters, of like or different character, which in any way affect the security or
203 protection of the holders of the notes or bonds.

204 E. Any pledge made by the Authority shall be valid and binding from the time when the pledge is
205 made; the Authority's interest, then existing or thereafter obtained, in the revenues, moneys, mortgage
206 loans, receivables, contract rights or other property or proceeds so pledged shall immediately be subject
207 to the lien of such pledge without any physical delivery or further act, and the lien of such pledge shall
208 be valid and binding as against all parties having claims of any kind in tort, contract or otherwise
209 against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor
210 any other instrument by which a pledge is created need be recorded, nor shall any filing be required
211 with respect thereto.

212 F. Neither the Authority nor any other person executing such notes or bonds shall be subject to any
213 personal liability or accountability by reason of the issuance thereof.

214 G. The Authority, subject to such agreements with noteholders or bondholders as may then exist,
215 shall have power out of any funds available therefor to purchase notes or bonds of the Authority, which
216 shall thereupon be cancelled unless the Authority shall provide written notification to the trustee
217 pursuant to subsection J, at a price not exceeding:

218 1. If the notes or bonds are then redeemable, the redemption price then applicable plus accrued
219 interest to the next interest payment thereon, or

220 2. If the notes or bonds are not then redeemable, the redemption price applicable on the first date
221 after such purchase upon which the notes or bonds become subject to redemption plus accrued interest
222 to such date.

223 H. In the discretion of the Authority, the bonds may be secured by a trust indenture by and between
224 the Authority and a corporate trustee, which may be any trust company or bank having the power of a
225 trust company within or outside the Commonwealth. Such trust indenture may contain such provisions
226 for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and
227 proper and not in violation of law, including covenants setting forth the duties of the Authority in
228 relation to the exercise of its corporate powers and the custody, safeguarding and application of all
229 moneys. The Authority may provide by such trust indenture for the payment of the proceeds of the bonds
230 and the revenues to the trustee under such trust indenture or other depository, and for the method of
231 disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred
232 in carrying out such trust indenture may be treated as a part of the operating expenses of the Authority.
233 If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a
234 separate trustee to represent them.

235 I. The notes and bonds shall be and are hereby declared to be negotiable instruments within the
236 meaning of and for all the purposes of the Uniform Commercial Code, subject only to the provisions of
237 the notes and bonds for registration.

238 J. In case any of the officers of the Authority whose signatures appear on any notes or bonds or
239 coupons shall cease to be such officers before the delivery of such notes or bonds, such signatures shall,
240 nevertheless, be valid and sufficient for all purposes, the same as if such officers had remained in office
241 until such delivery.

242 K. Notwithstanding any statute or case law to the contrary, the purchase or actual or constructive
243 ownership by the Authority of any of its notes or bonds with the intent that such notes or bonds remain

outstanding, as evidenced by written notification from the Authority to the trustee under the resolution or trust indenture, shall not cause such notes or bonds or the indebtedness evidenced thereby to be canceled or extinguished, subject to such terms and conditions as may be set forth in the written notification and except as may be otherwise provided in the resolution or trust indenture.

§ 45.2-1739. Commonwealth not liable on notes and bonds.

The notes, bonds, or other obligations of the Authority shall not be a debt or grant or loan of credit of the Commonwealth of Virginia, and the Commonwealth shall not be liable thereon, nor shall they be payable out of any funds other than those of the Authority; and such notes and bonds shall contain on the face thereof a statement to such effect.

§ 45.2-1740. Commonwealth Clean Energy Finance Authority Fund; established.

There is hereby created in the state treasury a special nonreverting fund to be known as the Commonwealth Clean Energy Finance Authority 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 the purposes of increasing private investment in clean energy and resiliency projects in the Commonwealth. Moneys used for implementing and administering the Fund shall be limited to 10 percent of the amount available in the Fund each year. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Chief Executive Officer.

§ 45.2-1741. Annual report; audit.

A. On or before December 1 of each year, the Authority shall submit an annual summary of its activities and recommendations to the Governor and the Chairmen of the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, the House Committee on Labor and Commerce, and the Senate Committee on Commerce and Labor. The report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents. The report shall be posted on the Department's website.

B. An independent certified public accountant or the Auditor of Public Accounts shall perform an audit of the books and accounts of the Authority at least once in each fiscal year.

§ 45.2-1742. Declaration of public purpose; exemption from taxation.

A. The exercise of the powers granted by this article shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience, and prosperity.

B. The Authority shall be deemed to be performing an essential governmental function in the exercise of the powers conferred upon it by this article, and the property of the Authority and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Authority under the provisions of this article.