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HOUSE BILL NO. 2697

Offered January 16, 2025

A BILL to amend and reenact §§ 10.1-1197.6 *and* 56-580 *of the Code of Virginia, relating to electrical facilities that generate electricity from wind; requirements for permitting; impact on U.S. military and national security.*

Patron—Martinez

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1197.6 and 56-580 of the Code of Virginia are 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 7 indicates that significant adverse impacts to wildlife, 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. *For a small renewable energy project that generates electricity solely from wind, a requirement that either (i) the U.S. Secretary of Defense has determined in accordance with 49 U.S.C. § 44718 that the project does not (a) have an adverse impact on military operations and readiness or (b) pose an unacceptable risk to the national security of the United States or (ii) the applicant has agreed to take measures acceptable to the U.S. Department of Defense to sufficiently mitigate any adverse impact on military operations and readiness or unacceptable risk to the national security of the United States;*

14. 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.~~ *15.* 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.

§ 56-580. Transmission and distribution of electric energy.

A. Subject to the provisions of § 56-585.1, the Commission shall continue to regulate pursuant to this title

the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems.

C. The Commission shall develop codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution, or transmission services, to the extent necessary to prevent impairment of competition. Nothing in this chapter shall prevent an incumbent electric utility from offering metering options to its customers.

D. The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest. In review of a petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1, unless exempt as a small renewable energy project for which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1. *An electrical generating facility that generates electricity solely from wind shall be considered contrary to the public interest unless (a) the U.S. Secretary of Defense has determined in accordance with 49 U.S.C. § 44718 that the facility does not (1) have an adverse impact on military operations and readiness or (2) pose an unacceptable risk to the national security of the United States or (b) the utility has agreed to take measures acceptable to the U.S. Department of Defense to sufficiently mitigate any adverse impact on military operations and readiness or unacceptable risk to the national security of the United States.* In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that ~~(i)~~ *(1)* are governed by the permit or approval or ~~(ii)~~ *(2)* are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. The Commission shall complete any proceeding under this section, or under any provision of the Utility Facilities Act (§ 56-265.1 et seq.), involving an application for a certificate, permit, or approval required for the construction or operation by a public utility of a small renewable energy project as defined in § 10.1-1197.5, within nine months following the utility's submission of a complete application therefore. Small renewable energy projects as defined in § 10.1-1197.5 are in the public interest and in determining whether to approve such project, the Commission shall liberally construe the provisions of this title.

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Subject to the provisions of § 56-585.1, the Commission shall continue to exercise its existing authority over the provision of electric distribution services to retail customers in the Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403. Nor shall any provision of this chapter apply to any such electric utility unless (i) that municipality or that authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 elects to have this chapter apply to that utility or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer eligible to purchase electric energy from any supplier in accordance with § 56-577 if that retail customer is outside the geographic area that was served by such municipality as of July 1, 1999, except (a) any area within the municipality that was served by an incumbent public utility as of that date but was thereafter served by an electric utility owned or operated by a municipality or by an authority created by a governmental unit exempt

from the referendum requirement of § 15.2-5403 pursuant to the terms of a franchise agreement between the municipality and the incumbent public utility, or (b) where the geographic area served by an electric utility owned or operated by a municipality is changed pursuant to mutual agreement between the municipality and the affected incumbent public utility in accordance with § 56-265.4:1. If an electric utility owned or operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any such utility, mutatis mutandis.

G. The applicability of all provisions of this chapter except § 56-594 to any investor-owned incumbent electric utility supplying electric service to retail customers on January 1, 2003, whose service territory assigned to it by the Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties shall be suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any other service territory in any jurisdiction to customers who have the right to receive retail electric energy from another supplier. During any such suspension period, the utility's rates shall be (i) its capped rates established pursuant to § 56-582 for the duration of the capped rate period established thereunder, and (ii) determined thereafter by the Commission on the basis of such utility's prudently incurred costs pursuant to Chapter 10 (§ 56-232 et seq.) of this title.

H. The expiration date of any certificates granted by the Commission pursuant to subsection D, for which applications were filed with the Commission prior to July 1, 2002, shall be extended for an additional two years from the expiration date that otherwise would apply.