

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

HOUSE BILL NO. 2003  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Labor and Commerce  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Delegate Laufer)

*A BILL to amend and reenact § 56-577 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-579.1, relating to electric utilities and licensed suppliers of electricity; regional transmission entities; annual report.*

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

**1. That § 56-577 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-579.1 as follows:**

**§ 56-577. Schedule for transition to retail competition; Commission authority; exemptions; pilot programs.**

A. Retail competition for the purchase and sale of electric energy shall be subject to the following provisions:

1. Each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which entity may be an independent system operator, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § 56-579. *Each such utility shall be subject to the provisions of § 56-579.1.*

2. The generation of electric energy shall be subject to regulation as specified in this chapter.

3. Subject to the provisions of subdivisions 4 and 5, only individual retail customers of electric energy within the Commonwealth, regardless of customer class, whose demand during the most recent calendar year exceeded five megawatts but did not exceed one percent of the customer's incumbent electric utility's peak load during the most recent calendar year unless such customer had noncoincident peak demand in excess of 90 megawatts in calendar year 2006 or any year thereafter, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving the exclusive service territory in which such a customer is located, subject to the following conditions:

a. If such customer does not purchase electric energy from licensed suppliers, such customer shall purchase electric energy from its incumbent electric utility.

31 b. Except as provided in subdivision 4, the demands of individual retail customers may not be aggregated  
32 or combined for the purpose of meeting the demand limitations of this provision, any other provision of this  
33 chapter to the contrary notwithstanding. For the purposes of this section, each noncontiguous site will  
34 nevertheless constitute an individual retail customer even though one or more such sites may be under  
35 common ownership of a single person.

36 c. If such customer does purchase electric energy from licensed suppliers after the expiration or  
37 termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the incumbent  
38 electric utility without giving five years' advance written notice of such intention to such utility, except where  
39 such customer demonstrates to the Commission, after notice and opportunity for hearing, through clear and  
40 convincing evidence that its supplier has failed to perform, or has anticipatorily breached its duty to perform,  
41 or otherwise is about to fail to perform, through no fault of the customer, and that such customer is unable to  
42 obtain service at reasonable rates from an alternative supplier. If, as a result of such proceeding, the  
43 Commission finds it in the public interest to grant an exemption from the five-year notice requirement, such  
44 customer may thereafter purchase electric energy at the costs of such utility, as determined by the  
45 Commission pursuant to subdivision 3 d hereof, for the remainder of the five-year notice period, after which  
46 point the customer may purchase electric energy from the utility under rates, terms and conditions determined  
47 pursuant to § 56-585.1. However, such customer shall be allowed to individually purchase electric energy  
48 from the utility under rates, terms, and conditions determined pursuant to § 56-585.1 if, upon application by  
49 such customer, the Commission finds that neither such customer's incumbent electric utility nor retail  
50 customers of such utility that do not choose to obtain electric energy from alternate suppliers will be  
51 adversely affected in a manner contrary to the public interest by granting such petition. In making such  
52 determination, the Commission shall take into consideration, without limitation, the impact and effect of any  
53 and all other previously approved petitions of like type with respect to such incumbent electric utility. Any  
54 customer that returns to purchase electric energy from its incumbent electric utility, before or after expiration  
55 of the five-year notice period, shall be subject to minimum stay periods equal to those prescribed by the  
56 Commission pursuant to subdivision C 1.

57 d. The costs of serving a customer that has received an exemption from the five-year notice requirement  
58 under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the actual expenses of  
59 procuring such electric energy from the market, (ii) additional administrative and transaction costs associated

60 with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and  
61 ancillary services, and (iii) a reasonable margin as determined pursuant to the provisions of subdivision A 2  
62 of § 56-585.1. The methodology established by the Commission for determining such costs shall ensure that  
63 neither utilities nor other retail customers are adversely affected in a manner contrary to the public interest.

64 4. Two or more individual nonresidential retail customers of electric energy within the Commonwealth,  
65 whose individual demand during the most recent calendar year did not exceed five megawatts, may petition  
66 the Commission for permission to aggregate or combine their demands, for the purpose of meeting the  
67 demand limitations of subdivision 3, so as to become qualified to purchase electric energy from any supplier  
68 of electric energy licensed to sell retail electric energy within the Commonwealth under the conditions  
69 specified in subdivision 3. The Commission may, after notice and opportunity for hearing, approve such  
70 petition if it finds that:

71 a. Neither such customers' incumbent electric utility nor retail customers of such utility that do not choose  
72 to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public  
73 interest by granting such petition. In making such determination, the Commission shall take into  
74 consideration, without limitation, the impact and effect of any and all other previously approved petitions of  
75 like type with respect to such incumbent electric utility; and

76 b. Approval of such petition is consistent with the public interest.

77 If such petition is approved, all customers whose load has been aggregated or combined shall thereafter be  
78 subject in all respects to the provisions of subdivision 3 and shall be treated as a single, individual customer  
79 for the purposes of said subdivision. In addition, the Commission shall impose reasonable periodic  
80 monitoring and reporting obligations on such customers to demonstrate that they continue, as a group, to  
81 meet the demand limitations of subdivision 3. If the Commission finds, after notice and opportunity for  
82 hearing, that such group of customers no longer meets the above demand limitations, the Commission may  
83 revoke its previous approval of the petition, or take such other actions as may be consistent with the public  
84 interest.

85 5. Individual retail customers of electric energy within the Commonwealth, regardless of customer class,  
86 shall be permitted:

87 a. To purchase electric energy provided 100 percent from renewable energy from any supplier of electric  
88 energy licensed to sell retail electric energy within the Commonwealth, other than any incumbent electric

89 utility that is not the incumbent electric utility serving the exclusive service territory in which such a  
90 customer is located, if the incumbent electric utility serving the exclusive service territory does not offer an  
91 approved tariff for electric energy provided 100 percent from renewable energy; and

92 b. To continue purchasing renewable energy pursuant to the terms of a power purchase agreement in  
93 effect on the date there is filed with the Commission a tariff for the incumbent electric utility that serves the  
94 exclusive service territory in which the customer is located to offer electric energy provided 100 percent from  
95 renewable energy, for the duration of such agreement.

96 6. To the extent that an incumbent electric utility has elected as of February 1, 2019, the Fixed Resource  
97 Requirement alternative as a Load Serving Entity in the PJM Region and continues to make such election and  
98 is therefore required to obtain capacity for all load and expected load growth in its service area, any customer  
99 of a utility subject to that requirement that purchases energy pursuant to subdivision 3 or 4 from a supplier  
100 licensed to sell retail electric energy within the Commonwealth shall continue to pay its incumbent electric  
101 utility for the non-fuel generation capacity and transmission related costs incurred by the incumbent electric  
102 utility in order to meet the customer's capacity obligations, pursuant to the incumbent electric utility's  
103 standard tariff that has been approved by and is on file with the Commission. In the case of such customer,  
104 the advance written notice period established in subdivisions 3 c and d shall be three years. This subdivision  
105 shall not apply to the customers of licensed suppliers that (i) had an agreement with a licensed supplier  
106 entered into before February 1, 2019, or (ii) had aggregation petitions pending before the Commission prior  
107 to January 1, 2019, unless and until any customer referenced in clause (i) or (ii) has returned to purchase  
108 electric energy from its incumbent electric utility, pursuant to the provisions of subdivision 3 or 4, and is  
109 receiving electric energy from such incumbent electric utility.

110 7. A tariff for one or more classes of residential customers filed with the Commission for approval by a  
111 cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric energy provided 100 percent  
112 from renewable energy if it provides undifferentiated electric energy and the cooperative retires a quantity of  
113 renewable energy certificates equal to 100 percent of the electric energy provided pursuant to such tariff. A  
114 tariff for one or more classes of nonresidential customers filed with the Commission for approval by a  
115 cooperative on or after July 1, 2012, shall be deemed to offer a tariff for electric energy provided 100 percent  
116 from renewable energy if it provides undifferentiated electric energy and the cooperative retires a quantity of  
117 renewable energy certificates equal to 100 percent of the electric energy provided pursuant to such tariff. For

118 purposes of this section, "renewable energy certificate" means, with respect to cooperatives, a tradable  
119 commodity or instrument issued by a regional transmission entity or affiliate or successor thereof in the  
120 United States that validates the generation of electricity from renewable energy sources or that is certified  
121 under a generally recognized renewable energy certificate standard. One renewable energy certificate equals  
122 1,000 kWh or one MWh of electricity generated from renewable energy. A cooperative offering electric  
123 energy provided 100 percent from renewable energy pursuant to this subdivision that involves the retirement  
124 of renewable energy certificates shall disclose to its retail customers who express an interest in purchasing  
125 energy pursuant to such tariff (i) that the renewable energy is comprised of the retirement of renewable  
126 energy certificates, (ii) the identity of the entity providing the renewable energy certificates, and (iii) the  
127 sources of renewable energy being offered.

128 B. The Commission shall promulgate such rules and regulations as may be necessary to implement the  
129 provisions of this section.

130 C. 1. By January 1, 2002, the Commission shall promulgate regulations establishing whether and, if so,  
131 for what minimum periods, customers who request service from an incumbent electric utility pursuant to  
132 subsection D of § 56-582 or a default service provider, after a period of receiving service from other suppliers  
133 of electric energy, shall be required to use such service from such incumbent electric utility or default service  
134 provider, as determined to be in the public interest by the Commission.

135 2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the  
136 management and control of an incumbent electric utility's transmission assets to a regional transmission entity  
137 after approval of such transfer by the Commission under § 56-579, retail customers of such utility (a)  
138 purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods prescribed  
139 by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such minimum stay  
140 obligations by agreeing to purchase electric energy at the market-based costs of such utility or default  
141 providers after a period of obtaining electric energy from another supplier. Such costs shall include (i) the  
142 actual expenses of procuring such electric energy from the market, (ii) additional administrative and  
143 transaction costs associated with procuring such energy, including, but not limited to, costs of transmission,  
144 transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology of  
145 ascertaining such costs shall be determined and approved by the Commission after notice and opportunity for  
146 hearing and after review of any plan filed by such utility to procure electric energy to serve such customers.

147 The methodology established by the Commission for determining such costs shall be consistent with the  
148 goals of (a) promoting the development of effective competition and economic development within the  
149 Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor  
150 retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

151 3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585, however,  
152 any such customers exempted from any applicable minimum stay periods as provided in subdivision 2 shall  
153 not be entitled to purchase retail electric energy thereafter from their incumbent electric utilities, or from any  
154 distributor required to provide default service under subsection B of § 56-585, at the capped rates established  
155 under § 56-582, unless such customers agree to satisfy any minimum stay period then applicable while  
156 obtaining retail electric energy at capped rates.

157 4. The Commission shall promulgate such rules and regulations as may be necessary to implement the  
158 provisions of this subsection, which rules and regulations shall include provisions specifying the  
159 commencement date of such minimum stay exemption program.

160 **§ 56-579.1. *Electric utilities and licensed suppliers of electricity; regional transmission entities; annual***  
161 ***report.***

162 *A. As used in this section:*

163 *"Affiliate" means the same as that term is defined in § 56-576.*

164 *"Licensed supplier" means any voting member of a regional transmission entity that has generation or*  
165 *transmission facilities in the Commonwealth and sells electricity to purchasers in the Commonwealth.*

166 *"Meeting" means any meeting of the regional transmission entity, its committees, user groups, task forces,*  
167 *or any other part of the regional transmission entity where votes are taken.*

168 *"Recorded vote" means any final or non-final vote that is tabulated, individually or as part of a sector, for*  
169 *any purpose at a meeting, regardless of whether the vote represents a final position of the entity casting such*  
170 *vote or the decision-making authority of those voting.*

171 *B. Each incumbent electric utility or licensed supplier that joins or establishes a regional transmission*  
172 *entity shall submit to the Commission no later than February 1 of each year a report of any recorded vote*  
173 *cast by the utility, licensed supplier, or any affiliate of the utility or licensed supplier at any meeting of the*  
174 *regional transmission entity during the immediately preceding calendar year.*

175 *C. The report shall include:*

176       1. All recorded votes cast by the utility or licensed supplier during the immediately preceding calendar  
177 year, regardless of whether the vote is otherwise disclosed;

178       2. All recorded votes cast by an affiliate of the utility or licensed supplier during the immediately  
179 preceding calendar year if the utility or licensed supplier did not vote on the matter, regardless of whether  
180 the vote is otherwise disclosed; and

181       3. A brief description explaining how each recorded vote cast by the utility, licensed supplier, or its  
182 affiliate, as appropriate, is in the public interest.

183       D. The Commission may, as part of any applicable proceeding, request information related to recorded  
184 votes cast by the utility or a licensed supplier at any meeting of a regional transmission entity.