

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. 2528  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Labor and Commerce  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Delegate Lopez)

*A BILL to amend and reenact § 56-577 of the Code of Virginia, relating to electric utilities; retail energy choice; customer return to service; subscription cap and queue.*

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

**1. That § 56-577 of the Code of Virginia is amended and reenacted 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.

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 *for customers of incumbent cooperative electric utilities or exceeded one megawatt for customers of incumbent non-cooperative electric utilities*, but whose 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 *or unless any restrictions in subdivision b apply*, 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. *The cap set forth in this subdivision b applies to customers of an incumbent non-cooperative electric*  
32 *utility that has peak demand during the most recent calendar year between one and five megawatts. No*  
33 *licensed supplier shall make a sale of electric energy to an individual retail customer if such customer's peak*  
34 *demand is between one and five megawatts in size, such customer has not received electric energy from a*  
35 *licensed supplier in the previous calendar year, and the annual aggregate total peak load of all individual*  
36 *retail customers of the incumbent utility with a peak demand between one and five megawatts purchasing*  
37 *electric energy from a licensed supplier exceeds a subscription cap allowance that is greater than 20 percent*  
38 *of the customer's incumbent utility's peak load during the most recent calendar year for all of such utility's*  
39 *customers with a peak demand between one and five megawatts.*

40        *By October 1, 2025, the Commission shall publish by order a numerical cap consistent with the provisions*  
41 *of this subdivision b. Each subsequent year on the first business day following October 1, the Commission*  
42 *shall increase the cap to reflect incremental increase in demand, if any. The previously published cap shall*  
43 *have effect until the publication of the next order. In calculating such cap, the amount of load of any*  
44 *customer with a peak demand between one and five megawatts that is purchasing electric energy from a*  
45 *licensed supplier as of June 30, 2025, shall not be counted against the cap allowance. If the incumbent*  
46 *utility's cap allowance is fully subscribed for two consecutive years, the Commission shall conduct a*  
47 *proceeding to review the cap allowance and may expand the cap allowance if a wait list exists for unserved*  
48 *customers and the utility continues to project load growth in its integrated resource plan or has realized load*  
49 *growth within the previous two years.*

50        *By January 1, 2026, the Commission shall establish a subscription queue process for eligible customers*  
51 *seeking to participate in purchasing electric energy from a licensed supplier pursuant to this subdivision b. If*  
52 *an incumbent utility's subscription cap allowance is fully subscribed, a new customer shall be placed in the*  
53 *queue. The customer's prospective licensed supplier shall notify the incumbent utility within five business*  
54 *days after being notified that the customer will purchase electric energy from a licensed supplier. The*  
55 *Commission shall ensure that, if a customer is notified that the customer's service from a licensed supplier*  
56 *will be terminated or restricted as a result of the licensed supplier limiting service in the Commonwealth, the*  
57 *customer has 60 days to acquire service from a different licensed supplier. If the customer is a public entity,*  
58 *the time to acquire service from a different licensed supplier shall not be less than 180 days. A customer may*  
59 *be removed from the subscription queue by notifying the incumbent utility electronically or in writing.*

60 *No later than January 15, 2027, and annually thereafter, each incumbent non-cooperative electric utility*  
61 *shall file with the Commission a rank-ordered subscription queue of all customers seeking to purchase*  
62 *electric energy from a licensed supplier under this subdivision b. The filing shall include the estimated*  
63 *amount of electric energy used by each customer in the subscription queue.*

64 *No later than January 1, 2028, and every two years thereafter, the Commission shall conduct a*  
65 *proceeding to review the subscription cap allowance and consider expanding or removing the cap based on*  
66 *subscription queue load, projected utility load growth, and other market factors that the Commission deems*  
67 *relevant.*

68 *c. A customer seeking to expand service at an existing facility may purchase electric energy from a*  
69 *licensed supplier for both the existing and expanded load at the facility as well as any new facility*  
70 *constructed or acquired by the customer that is similar in nature, provided that the customer owns more than*  
71 *50 percent of the new facility. The owner of such new facility may purchase electric energy from a licensed*  
72 *supplier regardless of whether the sales exceed the subscription cap allowance established under subdivision*  
73 *b.*

74 *d. Except as provided in subdivision 4, the demands of individual retail customers may not be aggregated*  
75 *or combined for the purpose of meeting the demand limitations of this provision, any other provision of this*  
76 *chapter to the contrary notwithstanding. For the purposes of applying this section to customers of an*  
77 *incumbent cooperative utility, each noncontiguous site will nevertheless constitute an individual retail*  
78 *customer even though one or more such sites may be under common ownership of a single person.*

79 *e. e. If such customer does purchase electric energy from licensed suppliers after the expiration or*  
80 *termination of capped rates, it shall ~~not~~ thereafter be entitled to purchase electric energy from the incumbent*  
81 *electric utility ~~without giving~~, subject to the following requirements.*

82 *Customers of an incumbent cooperative electric utility shall give five years' advance written notice of*  
83 *such intention to such utility, except where such customer demonstrates to the Commission, after notice and*  
84 *opportunity for hearing, through clear and convincing evidence that its supplier has failed to perform, or has*  
85 *anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of the*  
86 *customer, and that such customer is unable to obtain service at reasonable rates from an alternative supplier.*  
87 *If, as a result of such proceeding, the Commission finds it in the public interest to grant an exemption from*  
88 *the five-year notice requirement, such customer may thereafter purchase electric energy at the costs of such*

89 *cooperative* utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the remainder  
90 of the five-year notice period, after which point the customer may purchase electric energy from the  
91 *cooperative* utility under rates, terms, and conditions determined pursuant to § 56-585.1. However, such  
92 customer shall be allowed to individually purchase electric energy from the utility under rates, terms, and  
93 conditions determined pursuant to § 56-585.1 if, upon application by such customer, the Commission finds  
94 that neither such customer's incumbent *cooperative* electric utility nor retail customers of such utility that do  
95 not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary  
96 to the public interest by granting such petition. In making such determination, the Commission shall take into  
97 consideration, without limitation, the impact and effect of any and all other previously approved petitions of  
98 like type with respect to such incumbent *cooperative* electric utility. Any customer that returns to purchase  
99 electric energy from its incumbent *cooperative* electric utility, before or after expiration of the five-year  
100 notice period, shall be subject to minimum stay periods equal to those prescribed by the Commission  
101 pursuant to subdivision C 1.

102 *Customers of an incumbent non-cooperative electric utility shall give six months' advance written notice*  
103 *of such intention to such utility, unless a customer demonstrates to the Commission, after notice and*  
104 *opportunity for hearing, through clear and convincing evidence, that its supplier has failed to perform, or has*  
105 *anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of the*  
106 *customer, and that such customer is unable to obtain service at reasonable rates from a different licensed*  
107 *supplier. Such customer may thereafter purchase electric energy from the incumbent non-cooperative electric*  
108 *utility under rates, terms, and conditions determined pursuant to § 56-585.1, including at such utility's*  
109 *election, any applicable market-based tariff. Any customer that returns to purchase electric energy from its*  
110 *incumbent non-cooperative electric utility, before or after expiration of the six-month notice period, shall be*  
111 *subject to minimum stay periods equal to those prescribed by the Commission pursuant to subdivision C 1.*

112 ~~4~~.f. The costs of serving a customer that has received an exemption from the five-year notice requirement  
113 under subdivision 3 e hereof shall be the market-based costs of the utility, including (i) the actual expenses  
114 of procuring such electric energy from the market, (ii) additional administrative and transaction costs  
115 associated with procuring such energy, including, but not limited to, costs of transmission, transmission line  
116 losses, and ancillary services, and (iii) a reasonable margin as determined pursuant to the provisions of  
117 subdivision A 2 of § 56-585.1. The methodology established by the Commission for determining such costs

118 shall ensure that neither utilities nor other retail customers are adversely affected in a manner contrary to the  
119 public interest.

120 *g. The provisions of this subdivision g shall apply to customers of an incumbent non-cooperative electric*  
121 *utility. A licensed supplier serving customers under a contract signed after July 1, 2025, shall match a*  
122 *percentage of each participating customer's annual load with renewable energy certificates from generation*  
123 *resources within the PJM transmission region that meet the definition of renewable energy under § 56-576,*  
124 *except that such definition shall not include energy derived from biomass, waste heat from fossil fuel or*  
125 *biomass combustion, waste, landfill gas, or municipal solid waste. This percentage shall be equal to the*  
126 *percentage applied to the customer's incumbent utility for the renewable energy portfolio standard program*  
127 *under § 56-585.5. All customers for which renewable energy certificates are procured in accordance with*  
128 *this subdivision g shall be exempt from any nonbypassable charges imposed by the renewable energy*  
129 *portfolio standard program under § 56-585.5, except for the costs of an offshore wind generating facility*  
130 *imposed pursuant to § 56-585.1:11 that are allocated to all customers. The allocation of costs from an*  
131 *offshore wind generating facility to customers taking electric service from a licensed supplier shall be made*  
132 *after reducing such costs by the monetary benefits received for the sale of energy, capacity, ancillary*  
133 *services, and renewable energy certificates. Only those customers directly receiving such benefits as part of*  
134 *their electric supply service from an electric utility shall be allocated a cost that does not first subtract the*  
135 *monetary value of such benefits.*

136 *h. If in any year a licensed supplier is unable to meet the obligations of subdivision g, or if the cost of*  
137 *renewable energy certificates necessary to comply with subdivision d exceeds \$45 per megawatt-hour, such*  
138 *supplier shall be obligated to make a deficiency payment equal to \$45 for each megawatt-hour of shortfall for*  
139 *the year of noncompliance. All proceeds from the deficiency payments shall be deposited into an*  
140 *interest-bearing account administered by the Department of Energy.*

141 4. Two or more individual nonresidential retail customers of electric energy within the Commonwealth,  
142 whose individual demand during the most recent calendar year did not exceed five megawatts *if they are*  
143 *customers of an incumbent cooperative electric utility or one megawatt if they are customers of an incumbent*  
144 *non-cooperative electric utility*, may petition the Commission for permission to aggregate or combine their  
145 demands, for the purpose of meeting the demand limitations of subdivision 3, so as to become qualified to  
146 purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the

147 Commonwealth under the conditions specified in subdivision 3. The Commission may, after notice and  
148 opportunity for hearing, approve such petition if it finds that:

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

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

155 ~~If such petition is approved, all~~ All customers whose load has been aggregated or combined, *subject to*  
156 *approval of any applicable petition as set forth in this section*, shall thereafter be subject in all respects to the  
157 provisions of subdivision 3 and shall be treated as a single, individual customer for the purposes of said  
158 subdivision. In addition, the Commission shall impose reasonable periodic monitoring and reporting  
159 obligations on such customers to demonstrate that they continue, as a group, to meet the demand limitations  
160 of subdivision 3. If the Commission finds, after notice and opportunity for hearing, that such group of  
161 customers no longer meets the above demand limitations, the ~~Commission may revoke its previous approval~~  
162 ~~of the petition, or take such other actions as may be consistent with the public interest~~ *customer shall return*  
163 *to full service from its incumbent electric utility.*

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

166 a. To purchase electric energy provided 100 percent from renewable energy from any supplier of electric  
167 energy licensed to sell retail electric energy within the Commonwealth, other than any incumbent electric  
168 utility that is not the incumbent electric utility serving the exclusive service territory in which such a  
169 customer is located, if the incumbent electric utility serving the exclusive service territory does not offer an  
170 approved tariff for electric energy provided 100 percent from renewable energy; and

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

175 6. To the extent that an incumbent electric utility has elected as of February 1, 2019, the Fixed Resource

176 Requirement alternative as a Load Serving Entity in the PJM Region and continues to make such election and  
177 is therefore required to obtain capacity for all load and expected load growth in its service area, any customer  
178 of a utility subject to that requirement that purchases energy pursuant to subdivision 3 or 4 from a supplier  
179 licensed to sell retail electric energy within the Commonwealth shall continue to pay its incumbent electric  
180 utility for the non-fuel generation capacity and transmission related costs incurred by the incumbent electric  
181 utility in order to meet the customer's capacity obligations, pursuant to the incumbent electric utility's  
182 standard tariff that has been approved by and is on file with the Commission. In the case of such customer,  
183 the advance written notice period established in subdivisions 3 e e and ~~d f~~ shall be three years. This  
184 subdivision shall not apply to the customers of licensed suppliers that (i) had an agreement with a licensed  
185 supplier entered into before February 1, 2019, or (ii) had aggregation petitions pending before the  
186 Commission prior to January 1, 2019, unless and until any customer referenced in clause (i) or (ii) has  
187 returned to purchase electric energy from its incumbent electric utility, pursuant to the provisions of  
188 subdivision 3 or 4, and is receiving electric energy from such incumbent electric utility.

189 7. A tariff for one or more classes of residential customers filed with the Commission for approval by a  
190 cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric energy provided 100 percent  
191 from renewable energy if it provides undifferentiated electric energy and the cooperative retires a quantity of  
192 renewable energy certificates equal to 100 percent of the electric energy provided pursuant to such tariff. A  
193 tariff for one or more classes of nonresidential customers filed with the Commission for approval by a  
194 cooperative on or after July 1, 2012, shall be deemed to offer a tariff for electric energy provided 100 percent  
195 from renewable energy if it provides undifferentiated electric energy and the cooperative retires a quantity of  
196 renewable energy certificates equal to 100 percent of the electric energy provided pursuant to such tariff. For  
197 purposes of this section, "renewable energy certificate" means, with respect to cooperatives, a tradable  
198 commodity or instrument issued by a regional transmission entity or affiliate or successor thereof in the  
199 United States that validates the generation of electricity from renewable energy sources or that is certified  
200 under a generally recognized renewable energy certificate standard. One renewable energy certificate equals  
201 1,000 kWh or one MWh of electricity generated from renewable energy. A cooperative offering electric  
202 energy provided 100 percent from renewable energy pursuant to this subdivision that involves the retirement  
203 of renewable energy certificates shall disclose to its retail customers who express an interest in purchasing  
204 energy pursuant to such tariff (i) that the renewable energy is comprised of the retirement of renewable

205 energy certificates, (ii) the identity of the entity providing the renewable energy certificates, and (iii) the  
206 sources of renewable energy being offered.

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

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

214 2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the  
215 management and control of an incumbent electric utility's transmission assets to a regional transmission entity  
216 after approval of such transfer by the Commission under § 56-579, retail customers of such utility (a)  
217 purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods prescribed  
218 by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such minimum stay  
219 obligations by agreeing to purchase electric energy at the market-based costs of such utility or default  
220 providers after a period of obtaining electric energy from another supplier. Such costs shall include (i) the  
221 actual expenses of procuring such electric energy from the market, (ii) additional administrative and  
222 transaction costs associated with procuring such energy, including, but not limited to, costs of transmission,  
223 transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology of  
224 ascertaining such costs shall be determined and approved by the Commission after notice and opportunity for  
225 hearing and after review of any plan filed by such utility to procure electric energy to serve such customers.  
226 The methodology established by the Commission for determining such costs shall be consistent with the  
227 goals of (a) promoting the development of effective competition and economic development within the  
228 Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor  
229 retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

230 3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585, however,  
231 any such customers exempted from any applicable minimum stay periods as provided in subdivision 2 shall  
232 not be entitled to purchase retail electric energy thereafter from their incumbent electric utilities, or from any  
233 distributor required to provide default service under subsection B of § 56-585, at the capped rates established



234 under § 56-582, unless such customers agree to satisfy any minimum stay period then applicable while  
235 obtaining retail electric energy at capped rates.

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

239 **2. That (i) except as provided in clause (ii) of this enactment, the provisions of this act shall become**  
240 **effective on July 1, 2025, and (ii) the State Corporation Commission shall promulgate, in due course,**  
241 **rules and regulations to implement the provisions of this act, and such rules and regulations may**  
242 **specify a commencement date other than the effective date provided in clause (i) of this enactment.**