

HOUSE BILL NO. 395

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce

on _____)

(Patron Prior to Substitute—Delegate Krizek)

A BILL to amend and reenact §§ 15.2-2288.7, 56-594, 56-594.01, and 56-594.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 55.1-1212.1 and by adding in Chapter 23 of Title 56 a section numbered 56-596.7, relating to electric utilities; small portable solar generation devices; Residential Landlord and Tenant Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2288.7, 56-594, 56-594.01, and 56-594.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55.1-1212.1 and by adding in Chapter 23 of Title 56 a section numbered 56-596.7 as follows:

§ 15.2-2288.7. Local regulation of solar facilities and small portable solar generation devices.

A. An owner of a residential dwelling unit may install a solar facility on the roof of such dwelling to serve the electricity or thermal needs of that dwelling, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted solar energy generation facility to be located on property zoned residential shall be permitted, provided that such installation is (a) in compliance with any height and setback requirements in the zoning district where such property is located and (b) in compliance with any provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located. Except as provided herein, any other solar facility proposed on property zoned residential, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property other than the property where such facilities are located, shall be subject to any applicable zoning regulations of the locality.

B. An owner of real property zoned agricultural may install a solar facility on the roof of a residential dwelling on such property, or on the roof of another building or structure on such property, to serve the electricity or thermal needs of that property upon which such facilities are located, provided that such installation is (i) in compliance with any height and setback requirements in the zoning district where such property is located and (ii) in compliance with any provisions pertaining to any local historic, architectural

33 preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property is located.
34 Unless a local ordinance provides otherwise, a ground-mounted solar energy generation facility to be located
35 on property zoned agricultural and to be operated under § 56-594 or 56-594.2 shall be permitted, provided
36 that such installation is (a) in compliance with any height and setback requirements in the zoning district
37 where such property is located and (b) in compliance with any provisions pertaining to any local historic,
38 architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property
39 is located. Except as otherwise provided herein, any other solar facility proposed on property zoned
40 agricultural, including any solar facility that is designed to serve, or serves, the electricity or thermal needs of
41 any property other than the property where such facilities are located, shall be subject to any applicable
42 zoning regulations of the locality.

43 C. An owner of real property zoned commercial, industrial, or institutional may install a solar facility on
44 the roof of one or more buildings located on such property to serve the electricity or thermal needs of that
45 property upon which such facilities are located, provided that such installation is (i) in compliance with any
46 height and setback requirements in the zoning district where such property is located and (ii) in compliance
47 with any provisions pertaining to any local historic, architectural preservation, or corridor protection district
48 adopted pursuant to § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise,
49 a ground-mounted solar energy generation facility to be located on property zoned commercial, industrial, or
50 institutional shall be permitted, provided that such installation is (a) in compliance with any height and
51 setback requirements in the zoning district where such property is located and (b) in compliance with any
52 provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted
53 pursuant to § 15.2-2306 where such property is located. Except as otherwise provided herein, any other solar
54 facility proposed on property zoned commercial, industrial, or institutional, including any solar facility that is
55 designed to serve, or serves, the electricity or thermal needs of any property other than the property where
56 such facilities are located, shall be subject to any applicable zoning regulations of the locality.

57 D. An owner of real property zoned mixed-use may install a solar facility on the roof of one or more
58 buildings located on such property to serve the electricity or thermal needs of that property upon which such
59 facilities are located, provided that such installation is (i) in compliance with any height and setback
60 requirements in the zoning district where such property is located and (ii) in compliance with any provisions
61 pertaining to any local historic, architectural preservation, or corridor protection district adopted pursuant to
62 § 15.2-2306 where such property is located. Unless a local ordinance provides otherwise, a ground-mounted
63 solar energy generation facility to be located on property zoned mixed-use shall be permitted, provided that

64 such installation is (a) in compliance with any height and setback requirements in the zoning district where
65 such property is located and (b) in compliance with any provisions pertaining to any local historic,
66 architectural preservation, or corridor protection district adopted pursuant to § 15.2-2306 where such property
67 is located. Except as provided herein, any other solar facility proposed on property zoned mixed-use,
68 including any solar facility that is designed to serve, or serves, the electricity or thermal needs of any property
69 other than the property where such facilities are located, shall be subject to any applicable zoning regulations
70 of the locality.

71 *E. No locality shall prohibit the use of a small portable solar generation device, as defined in § 56-596.7,
72 on a residential structure, provided that such device (i) is in compliance with any height and setback
73 requirements in the zoning district where such residential structure is located; (ii) is in compliance with any
74 provisions pertaining to any local historic, architectural preservation, or corridor protection district adopted
75 pursuant to § 15.2-2306 where such residential structure is located; and (iii) meets the requirements of this
76 section and § 56-596.7.*

77 *F. Nothing in this section shall be construed to supersede or limit contracts or agreements between or
78 among individuals or private entities related to the use of real property, including recorded declarations and
79 covenants, the provisions of condominium instruments of a condominium created pursuant to the Virginia
80 Condominium Act (§ 55.1-1900 et seq.), the declaration of a common interest community as defined in
81 § 54.1-2345, the cooperative instruments of a cooperative created pursuant to the Virginia Real Estate
82 Cooperative Act (§ 55.1-2100 et seq.), or any declaration of a property owners' association created pursuant
83 to the Property Owners' Association Act (§ 55.1-1800 et seq.).*

84 *F. G. A locality, by ordinance, may provide by-right authority for installation of solar facilities *or devices*
85 in any zoning classification in addition to that provided in this section. A locality may also, by ordinance,
86 require a property owner or an applicant for a permit pursuant to the Uniform Statewide Building Code
87 (§ 36-97 et seq.) who removes solar panels *or devices* to dispose of such panels *or devices* in accordance with
88 such ordinance in addition to other applicable laws and regulations affecting such disposal.*

89 ***§ 55.1-1212.1. Installation of small portable solar generation devices.***

90 *A. As used in this section, "small portable solar generation device" means a moveable photovoltaic
91 generation device that (i) has a maximum power output of not more than 1,200 watts; (ii) is designed to be
92 connected to the electrical system of a building through a standard outlet; (iii) is located on the customer's
93 side of the electric meter and intended primarily to offset part of the customer's electricity consumption; (iv)
94 meets the standards of the most recent version of the National Electrical Code; and (v) is certified by a*

95 *nationally recognized testing laboratory, as described in 29 C.F.R. § 1910.7, or an equivalent nationally*
96 *recognized testing laboratory.*

97 *B. No landlord who owns more than four rental dwelling units or more than a 10 percent interest in more*
98 *than four rental dwelling units, whether individually or through a business entity, in the Commonwealth shall*
99 *prohibit a tenant from installing a small portable solar generation device on the exterior of the tenant's*
100 *premises. However, a landlord may establish reasonable restrictions concerning the size, place, and manner*
101 *or placement of such small portable solar generation devices. The landlord may prohibit or restrict the*
102 *installation of such small portable solar generation devices elsewhere on the premises.*

103 *C. The tenant shall be responsible for any damages sustained to the rental dwelling unit or the premises*
104 *as a result of any small portable solar generation device installed pursuant to this section.*

105 **§ 56-594. Net energy metering provisions.**

106 A. The Commission shall establish by regulation a program that affords eligible customer-generators the
107 opportunity to participate in net energy metering, and a program, to begin no later than July 1, 2014, for
108 customers of investor-owned utilities and to begin no later than July 1, 2015, and to end July 1, 2019, for
109 customers of electric cooperatives as provided in subsection G, to afford eligible agricultural
110 customer-generators the opportunity to participate in net energy metering. The regulations may include, but
111 need not be limited to, requirements for (i) retail sellers; (ii) owners or operators of distribution or
112 transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; (v) eligible
113 agricultural customer-generators; or (vi) any combination of the foregoing, as the Commission determines
114 will facilitate the provision of net energy metering, provided that the Commission determines that such
115 requirements do not adversely affect the public interest. On and after July 1, 2017, small agricultural
116 generators or eligible agricultural customer-generators may elect to interconnect pursuant to the provisions of
117 this section or as small agricultural generators pursuant to § 56-594.2, but not both. Existing eligible
118 agricultural customer-generators may elect to become small agricultural generators, but may not revert to
119 being eligible agricultural customer-generators after such election. On and after July 1, 2019, interconnection
120 of eligible agricultural customer-generators shall cease for electric cooperatives only, and such facilities shall
121 interconnect solely as small agricultural generators. For electric cooperatives, eligible agricultural
122 customer-generators whose renewable energy generating facilities were interconnected before July 1, 2019,
123 may continue to participate in net energy metering pursuant to this section for a period not to exceed 25 years
124 from the date of their renewable energy generating facility's original interconnection.

125 B. For the purpose of this section:

126 "Eligible agricultural customer-generator" means a customer that operates a renewable energy generating
127 facility as part of an agricultural business, which generating facility (i) uses as its sole energy source solar
128 power, wind power, or aerobic or anaerobic digester gas, (ii) does not have an aggregate generation capacity
129 of more than 500 kilowatts, (iii) is located on land owned or controlled by the agricultural business, (iv) is
130 connected to the customer's wiring on the customer's side of its interconnection with the distributor; (v) is
131 interconnected and operated in parallel with an electric company's transmission and distribution facilities, ~~and~~
132 (vi) is used primarily to provide energy to metered accounts of the agricultural business; *and (vii) is not a*
133 *small portable solar generation device as defined in § 56-596.7.* An eligible agricultural customer-generator
134 may be served by multiple meters serving the eligible agricultural customer-generator that are located at the
135 same or adjacent sites, such that the eligible agricultural customer-generator may aggregate in a single
136 account the electricity consumption and generation measured by the meters, provided that the same utility
137 serves all such meters. The aggregated load shall be served under the appropriate tariff.

138 "Eligible customer-generator" means a customer that owns and operates, or contracts with other persons
139 to own, operate, or both, an electrical generating facility, including any additions or enhancements such as
140 battery storage or a smart inverter, that (i) has a capacity of not more than 25 kilowatts for residential
141 customers and not more than three megawatts for nonresidential customers; (ii) uses as its total source of fuel
142 renewable energy, as defined in § 56-576; (iii) is located on land owned or leased by the customer and is
143 connected to the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is
144 interconnected and operated in parallel with an electric company's transmission and distribution facilities; ~~and~~
145 (v) is intended primarily to offset all or part of the customer's own electricity requirements; *and (vi) is not a*
146 *small portable solar generation device as defined in § 56-596.7.* No contract, lease, or arrangement by which
147 a third party owns, maintains, or operates an electrical generating facility on an eligible customer-generator's
148 property shall constitute the sale of electricity or cause the customer-generator or the third party to be
149 considered an electric utility by virtue of participating in net energy metering. In addition to the electrical
150 generating facility size limitations in clause (i), the capacity of any generating facility installed under this
151 section between July 1, 2015, and July 1, 2020, shall not exceed the expected annual energy consumption
152 based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months
153 of billing history is not available. In addition to the electrical generating facility size limitation in clause (i),
154 in the certificated service territory of a Phase I Utility, the capacity of any generating facility installed under
155 this section after July 1, 2020, shall not exceed 100 percent of the expected annual energy consumption based
156 on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of

157 billing history is not available, and in the certificated service territory of a Phase II Utility, the capacity of any
158 generating facility installed under this section after July 1, 2020, shall not exceed 150 percent of the expected
159 annual energy consumption based on the previous 12 months of billing history or an annualized calculation of
160 billing history if 12 months of billing history is not available.

161 "Net energy metering" means measuring the difference, over the net metering period, between (i)
162 electricity supplied to an eligible customer-generator or eligible agricultural customer-generator from the
163 electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible customer-
164 generator or eligible agricultural customer-generator.

165 "Net metering period" means the 12-month period following the date of final interconnection of the
166 eligible customer-generator's or eligible agricultural customer-generator's system with an electric service
167 provider, and each 12-month period thereafter.

168 "Small agricultural generator" has the same meaning that is ascribed to that term in § 56-594.2.

169 C. The Commission's regulations shall ensure that (i) the metering equipment installed for net metering
170 shall be capable of measuring the flow of electricity in two directions and (ii) any eligible customer-generator
171 seeking to participate in net energy metering shall notify its supplier and receive approval to interconnect
172 prior to installation of an electrical generating facility. The electric distribution company shall have 30 days
173 from the date of notification for residential facilities, and 60 days from the date of notification for
174 nonresidential facilities, to determine whether the interconnection requirements have been met. Such
175 regulations shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible
176 customer-generator's electrical generating system, and each electrical generating system of an eligible
177 agricultural customer-generator, shall meet all applicable safety and performance standards established by the
178 National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing
179 laboratories such as Underwriters Laboratories. Beyond the requirements set forth in this section and to
180 ensure public safety, power quality, and reliability of the supplier's electric distribution system, an eligible
181 customer-generator or eligible agricultural customer-generator whose electrical generating system meets
182 those standards and rules shall bear all reasonable costs of equipment required for the interconnection to the
183 supplier's electric distribution system, including costs, if any, to (a) install additional controls and (b) perform
184 or pay for additional tests. No eligible customer-generator or eligible agricultural customer-generator shall be
185 required to provide proof of liability insurance or to purchase additional liability insurance as a condition of

186 interconnection.

187 D. The Commission shall establish minimum requirements for contracts to be entered into by the parties
188 to net metering arrangements. Such requirements shall protect the eligible customer-generator or eligible
189 agricultural customer-generator against discrimination by virtue of its status as an eligible customer-generator
190 or eligible agricultural customer-generator, and permit customers that are served on time-of-use tariffs that
191 have electricity supply demand charges contained within the electricity supply portion of the time-of-use
192 tariffs to participate as an eligible customer-generator or eligible agricultural customer-generator.
193 Notwithstanding the cost allocation provisions of subsection C, eligible customer-generators or eligible
194 agricultural customer-generators served on demand charge-based time-of-use tariffs shall bear the
195 incremental metering costs required to net meter such customers.

196 E. If electricity generated by an eligible customer-generator or eligible agricultural customer-generator
197 over the net metering period exceeds the electricity consumed by the eligible customer-generator or eligible
198 agricultural customer-generator, the customer-generator or eligible agricultural customer-generator shall be
199 compensated for the excess electricity if the entity contracting to receive such electric energy and the eligible
200 customer-generator or eligible agricultural customer-generator enter into a power purchase agreement for
201 such excess electricity. Upon the written request of the eligible customer-generator or eligible agricultural
202 customer-generator, the supplier that serves the eligible customer-generator or eligible agricultural customer-
203 generator shall enter into a power purchase agreement with the requesting eligible customer-generator or
204 eligible agricultural customer-generator that is consistent with the minimum requirements for contracts
205 established by the Commission pursuant to subsection D. The power purchase agreement shall obligate the
206 supplier to purchase such excess electricity at the rate that is provided for such purchases in a net metering
207 standard contract or tariff approved by the Commission, unless the parties agree to a higher rate. The eligible
208 customer-generator or eligible agricultural customer-generator owns any renewable energy certificates
209 associated with its electrical generating facility; however, at the time that the eligible customer-generator or
210 eligible agricultural customer-generator enters into a power purchase agreement with its supplier, the eligible
211 customer-generator or eligible agricultural customer-generator shall have a one-time option to sell the
212 renewable energy certificates associated with such electrical generating facility to its supplier and be
213 compensated at an amount that is established by the Commission to reflect the value of such renewable
214 energy certificates. Nothing in this section shall prevent the eligible customer-generator or eligible

215 agricultural customer-generator and the supplier from voluntarily entering into an agreement for the sale and
216 purchase of excess electricity or renewable energy certificates at mutually-agreed upon prices if the eligible
217 customer-generator or eligible agricultural customer-generator does not exercise its option to sell its
218 renewable energy certificates to its supplier at Commission-approved prices at the time that the eligible
219 customer-generator or eligible agricultural customer-generator enters into a power purchase agreement with
220 its supplier. All costs incurred by the supplier to purchase excess electricity and renewable energy certificates
221 from eligible customer-generators or eligible agricultural customer-generators shall be recoverable through its
222 Renewable Energy Portfolio Standard (RPS) rate adjustment clause, if the supplier has a Commission-
223 approved RPS plan. If not, then all costs shall be recoverable through the supplier's fuel adjustment clause.
224 For purposes of this section, "all costs" shall be defined as the rates paid to the eligible customer-generator or
225 eligible agricultural customer-generator for the purchase of excess electricity and renewable energy
226 certificates and any administrative costs incurred to manage the eligible customer-generator's or eligible
227 agricultural customer-generator's power purchase arrangements. The net metering standard contract or tariff
228 shall be available to eligible customer-generators or eligible agricultural customer-generators on a first-come,
229 first-served basis in each electric distribution company's Virginia service area until the rated generating
230 capacity owned and operated by eligible customer-generators, eligible agricultural customer-generators, and
231 small agricultural generators in the Commonwealth reaches six percent, in the aggregate, five percent of
232 which is available to all customers and one percent of which is available only to low-income utility customers
233 of each electric distribution company's adjusted Virginia peak-load forecast for the previous year, and shall
234 require the supplier to pay the eligible customer-generator or eligible agricultural customer-generator for such
235 excess electricity in a timely manner at a rate to be established by the Commission.

236 On and after the earlier of (i) 2024 for a Phase I Utility or 2025 for a Phase II Utility or (ii) when the
237 aggregate rated generating capacity owned and operated by eligible customer-generators, eligible agricultural
238 customer-generators, and small agricultural generators in the Commonwealth reaches three percent of a Phase
239 I or Phase II Utility's adjusted Virginia peak-load forecast for the previous year, the Commission shall
240 conduct a net energy metering proceeding.

241 In any net energy metering proceeding, the Commission shall, after notice and opportunity for hearing,
242 evaluate and establish (a) an amount customers shall pay on their utility bills each month for the costs of
243 using the utility's infrastructure; (b) an amount the utility shall pay to appropriately compensate the customer,

244 as determined by the Commission, for the total benefits such facilities provide; (c) the direct and indirect
245 economic impact of net metering to the Commonwealth; and (d) any other information the Commission
246 deems relevant. The Commission shall establish an appropriate rate structure related thereto, which shall
247 govern compensation related to all eligible customer-generators, eligible agricultural customer-generators,
248 and small agricultural generators, except low-income utility customers, that interconnect after the effective
249 date established in the Commission's final order. Nothing in the Commission's final order shall affect any
250 eligible customer-generators, eligible agricultural customer-generators, and small agricultural generators who
251 interconnect before the effective date of such final order. As part of the net energy metering proceeding, the
252 Commission shall evaluate the six percent aggregate net metering cap and may, if appropriate, raise or
253 remove such cap. The Commission shall enter its final order in such a proceeding no later than 12 months
254 after it commences such proceeding, and such final order shall establish a date by which the new terms and
255 conditions shall apply for interconnection and shall also provide that, if the terms and conditions of
256 compensation in the final order differ from the terms and conditions available to customers before the
257 proceeding, low-income utility customers may interconnect under whichever terms are most favorable to
258 them.

259 F. Any residential eligible customer-generator or eligible agricultural customer-generator, in the service
260 territory of a Phase II Utility who owns and operates, or contracts with other persons to own, operate, or both,
261 an electrical generating facility with a capacity that exceeds 15 kilowatts shall pay to its supplier, in addition
262 to any other charges authorized by law, a monthly standby charge. The amount of the standby charge and the
263 terms and conditions under which it is assessed shall be in accordance with a methodology developed by the
264 supplier and approved by the Commission. The Commission shall approve a supplier's proposed standby
265 charge methodology if it finds that the standby charges collected from all such eligible customer-generators
266 and eligible agricultural customer-generators allow the supplier to recover only the portion of the supplier's
267 infrastructure costs that are properly associated with serving such eligible customer-generators or eligible
268 agricultural customer-generators. Such an eligible customer-generator or eligible agricultural customer-
269 generator shall not be liable for a standby charge until the date specified in an order of the Commission
270 approving its supplier's methodology. For customers of all other investor-owned utilities, on and after July 1,
271 2020, standby charges are prohibited for any residential eligible customer-generator or agricultural customer-
272 generator.

273 G. On and after the later of July 1, 2019, or the effective date of regulations that the Commission is
274 required to adopt pursuant to § 56-594.01, (i) net energy metering in the service territory of each electric
275 cooperative shall be conducted as provided in a program implemented pursuant to § 56-594.01 and (ii) the
276 provisions of this section shall not apply to net energy metering in the service territory of an electric
277 cooperative except as provided in § 56-594.01.

278 H. The Commission may adopt such rules or establish such guidelines as may be necessary for its general
279 administration of this section.

280 I. When the Commission conducts a net energy metering proceeding, it shall:

281 1. Investigate and determine the costs and benefits of the current net energy metering program;
282 2. Establish an appropriate netting measurement interval for a successor tariff that is just and reasonable in
283 light of the costs and benefits of the net metering program in aggregate, and applicable to new requests for
284 net energy metering service;

285 3. Determine a specific avoided cost for customer-generators, the different type of customer-generator
286 technologies where the Commission deems it appropriate, and establish the methodology for determining the
287 compensation rate for any net excess generation determined according to the applicable net measurement
288 interval for any new tariff; and

289 4. Make all reasonable efforts to ensure that the net energy metering program does not result in
290 unreasonable cost-shifting to nonparticipating electric utility customers.

291 J. In evaluating the costs and benefits of the net energy metering program, the Commission shall consider:

292 1. The aggregate impact of customer-generators on the electric utility's long-run marginal costs of
293 generation, distribution, and transmission;

294 2. The cost of service implications of customer-generators on other customers within the same class,
295 including an evaluation of whether customer-generators provide an adequate rate of return to the electrical
296 utility compared to the otherwise applicable rate class when, for analytical purposes only, examined as a
297 separate class within a cost of service study;

298 3. The direct and indirect economic impact of the net energy metering program to the Commonwealth;
299 and

300 4. Any other information it deems relevant, including environmental and resilience benefits of customer-
301 generator facilities.

302 K. Notwithstanding the provisions of this section, § 56-585.1:8, or any other provision of law to the
303 contrary, any locality that is a nonjurisdictional customer of a Phase II Utility, as defined in § 56-585.1:3, and
304 is in Planning District Eight with a population greater than 1 million may (i) install solar-powered or
305 wind-powered electric generation facilities with a rated capacity not exceeding five megawatts, whether the
306 facilities are owned by the locality or owned and operated by a third party pursuant to a contract with the
307 locality, on any locality-owned site within the locality and (ii) credit the electricity generated at any such
308 facility as directed by the governing body of the locality to any one or more of the metered accounts of
309 buildings or other facilities of the locality or the locality's public school division that are located within the
310 locality, without regard to whether the buildings and facilities are located at the same site where the electric
311 generation facility is located or at a site contiguous thereto. The amount of the credit for such electricity to
312 the metered accounts of the locality or its public school division shall be identical, with respect to the rate
313 structure, all retail rate components, and monthly charges, to the amount the locality or public school division
314 would otherwise be charged for such amount of electricity under its contract with the public utility, without
315 the assessment by the public utility of any distribution charges, service charges, or fees in connection with or
316 arising out of such crediting.

317 L. Any eligible customer-generator or eligible agricultural customer-generator may participate in demand
318 response, energy efficiency, or peak reduction from dispatch of onsite battery service, provided that the
319 compensation received is in exchange for a distinct service that is not already compensated by net metering
320 credits for electricity exported to the electric distribution system or compensated by any other utility program
321 or tariff. The Commission shall review and evaluate the continuing need for the imposition of standby or
322 other charges on eligible customer-generators or eligible agricultural customer-generators in any net energy
323 metering proceeding conducted pursuant to subsection E.

324 **§ 56-594.01. Net energy metering provisions for electric cooperative service territories.**

325 A. The Commission shall establish by regulation a program that affords eligible customer-generators the
326 opportunity to participate in net energy metering in the service territory of each electric cooperative, which
327 program shall commence on the later of July 1, 2019, or the effective date of such regulations. Such
328 regulations shall be similar to existing regulations promulgated pursuant to § 56-594. In lieu of adopting new
329 regulations, the Commission may amend such existing regulations to apply to electric cooperatives with such
330 revisions as are required to comply with the provisions of this section. The regulations may include
331 requirements applicable to (i) retail sellers, (ii) owners or operators of distribution or transmission facilities,
332 (iii) providers of default service, (iv) eligible customer-generators, or (v) any combination of the foregoing,

333 as the Commission determines will facilitate the provision of net energy metering, provided that the
334 Commission determines that such requirements do not adversely affect the public interest.

335 B. As used in this section:

336 "Eligible customer-generator" means a customer that owns and operates, or contracts with other persons
337 to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than 20 kilowatts
338 for residential customers and not more than one megawatt for nonresidential customers on an electrical
339 generating facility placed in service after July 1, 2015; (ii) uses as its total source of fuel renewable energy as
340 defined in § 56-576; (iii) is located on the customer's premises and is connected to the customer's wiring on
341 the customer's side of its interconnection with the distributor; (iv) is interconnected and operated in parallel
342 with an electric company's transmission and distribution facilities; ~~and~~ (v) is intended primarily to offset all
343 or part of the customer's own electricity requirements; *and* (vi) is not a small portable solar generation device
344 as defined in § 56-596.7. In addition to the electrical generating facility size limitations in clause (i), the
345 capacity of any generating facility installed under this section after July 1, 2015, shall not exceed the
346 expected annual energy consumption based on the previous 12 months of billing history or an annualized
347 calculation of billing history if 12 months of billing history is not available.

348 "Net energy metering" means measuring the difference, over the net metering period, between (i)
349 electricity supplied to an eligible customer-generator from the electric grid and (ii) the electricity generated
350 and fed back to the electric grid by the eligible customer-generator.

351 "Net metering period" means the 12-month period following the date of final interconnection of the
352 eligible customer-generator's system with an electric service provider, and each 12-month period thereafter.

353 C. The Commission's regulations shall ensure that (i) the metering equipment installed for net metering
354 shall be capable of measuring the flow of electricity in two directions and (ii) any eligible customer-generator
355 seeking to participate in net energy metering shall notify its supplier and receive approval to interconnect
356 prior to installation of an electrical generating facility. The Commission shall publish a form for such prior
357 notice and such notice shall be processed promptly by the supplier prior to any construction activity taking
358 place. After construction, inspection and documentation thereof shall be required prior to interconnection.
359 The electric distribution company shall have 30 days from the date of each notification for residential
360 facilities, and 60 days from the date of each notification for nonresidential facilities, to determine whether the
361 interconnection requirements have been met. Such regulations shall allocate fairly the cost of such equipment
362 and any necessary interconnection. An eligible customer-generator's electrical generating system shall meet

363 all applicable safety and performance standards established by the National Electrical Code, the Institute of
364 Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. In
365 addition to the requirements set forth in this section and to ensure public safety, power quality, and reliability
366 of the supplier's electric distribution system, an eligible customer-generator whose electrical generating
367 system meets those standards and rules shall bear all reasonable costs of equipment required for the
368 interconnection to the supplier's electric distribution system, including costs, if any, to (a) install additional
369 controls, (b) perform or pay for additional tests, and (c) purchase additional liability insurance. An electric
370 cooperative may publish and use its own forms, including an electronic form, for purposes of implementing
371 the regulations described herein so long as the information collected on the Commission's form is also
372 collected by the cooperative and submitted to the Commission.

373 D. The Commission shall establish minimum requirements for contracts to be entered into by the parties
374 to net metering arrangements. Such requirements shall protect the eligible customer-generator against
375 discrimination by virtue of its status as an eligible customer-generator and permit customers that are served
376 on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply
377 portion of the time-of-use tariffs to participate as an eligible customer-generator. Notwithstanding the cost
378 allocation provisions of subsection C, eligible customer-generators served on demand charge-based time-of-
379 use tariffs shall bear the incremental metering costs required to net meter such customers.

380 E. If electricity generated by an eligible customer-generator over the net metering period exceeds the
381 electricity consumed by the eligible customer-generator, the customer-generator shall be compensated for the
382 excess electricity if the entity contracting to receive such electric energy and the eligible customer-generator
383 enter into a power purchase agreement for such excess electricity. Upon the written request of the eligible
384 customer-generator, the supplier that serves the eligible customer-generator shall enter into a power purchase
385 agreement with the requesting eligible customer-generator that is consistent with the minimum requirements
386 for contracts established by the Commission pursuant to subsection D. The power purchase agreement shall
387 obligate the supplier to purchase such excess electricity at the rate that is provided for such purchases in a net
388 metering standard contract or tariff approved by the Commission, unless the parties agree to a higher rate.
389 The eligible customer-generator owns any renewable energy certificates associated with its electrical
390 generating facility; however, at the time that the eligible customer-generator enters into a power purchase
391 agreement with its supplier, the eligible customer-generator shall have a one-time option to sell the renewable

392 energy certificates associated with such electrical generating facility to its supplier and be compensated at an
393 amount that is established by the Commission to reflect the value of such renewable energy certificates.
394 Nothing in this section shall prevent the eligible customer-generator and the supplier from voluntarily
395 entering into an agreement for the sale and purchase of excess electricity or renewable energy certificates at
396 mutually agreed upon prices if the eligible customer-generator does not exercise its option to sell its
397 renewable energy certificates to its supplier at Commission-approved prices at the time that the eligible
398 customer-generator enters into a power purchase agreement with its supplier. All costs incurred by the
399 supplier to purchase excess electricity and renewable energy certificates from eligible customer-generators
400 shall be recoverable through its fuel adjustment clause. For purposes of this section, "all costs" shall be
401 defined as the rates paid to the eligible customer-generator for the purchase of excess electricity and
402 renewable energy certificates and any administrative costs incurred to manage the eligible customer-
403 generator's power purchase arrangements. The net metering standard contract or tariff shall be available to
404 eligible customer-generators on a first-come, first-served basis, subject to the provisions of subsection F, and
405 shall require the supplier to pay the eligible customer-generator for such excess electricity in a timely manner
406 at a rate to be established by the Commission.

407 F. Net energy metering shall be open to customers on a first-come, first-served basis until such time as the
408 total capacity of the generation facilities, expressed in alternating current nameplate, reaches two percent of
409 system peak for residential customers, two percent of system peak for not-for-profit and nonjurisdictional
410 customers, and one percent of system peak for other nonresidential customers, which are herein referred to as
411 the electric cooperative's caps. As used in this subsection, "percent of system peak" refers to a percentage of
412 the electric cooperative's highest total system peak, based on the noncoincident peak of the electric
413 cooperative or the coincident peak of all of the electric cooperative's customers, within the past three years as
414 listed in Part O, Line 20 of Form 7 filed with the Rural Utilities Service or its equivalent, less any portion of
415 the cooperative's total load that is served by a competitive service provider or by a market-based rate. Such
416 caps shall not decrease but may increase if the system peak in any year exceeds the previous year's system
417 peak. Nothing in this subsection shall amend or confer new rights upon any existing nonjurisdictional
418 contract or arrangement or work to submit any nonjurisdictional customer, contract, or arrangement to the
419 jurisdiction of the Commission. For purposes of calculating the caps established in this subsection, all net
420 energy metering shall be counted, whenever interconnected, and shall include net energy metering
421 interconnected pursuant to § 56-594, agricultural net energy metering, and any net energy metering entered

422 into with a third-party provider registered pursuant to subsection K. Net energy metering with
423 nonjurisdictional customers entered into prior to July 1, 2019, may be counted toward the caps, in the
424 discretion of the cooperative, as net energy metering if the nonjurisdictional customer takes service pursuant
425 to a cooperative's net energy metering rider. Net energy metering with nonjurisdictional customers entered
426 into on or after July 1, 2019, shall be counted toward the caps by default unless the cooperative has reason to
427 exclude such net energy metering as subject to a separate contract or arrangement. Each electric cooperative
428 governed by this section shall publish information regarding the calculation and status of its caps pursuant to
429 this subsection, or the electric cooperative's systemwide cap established in § 56-585.4 if applicable, on the
430 electric cooperative's website.

431 G. An electric cooperative may, without Commission approval or the requirement of any filing other than
432 as provided in this subsection, upon the adoption by its board of directors of a resolution so providing, raise
433 the caps established in subsection F, with any increase allocated among residential, not-for-profit and
434 nonjurisdictional, and other nonresidential customers as the board of directors may find to be in the interests
435 of the electric cooperative's membership. The electric cooperative shall promptly file a revised net energy
436 metering compliance filing with the Commission for informational purposes.

437 H. Any residential eligible customer-generator who owns and operates, or contracts with other persons to
438 own, operate, or both, an electrical generating facility with a capacity that exceeds 10 kilowatts shall pay to
439 its supplier, in addition to any other charges authorized by law, a monthly standby charge. The amount of the
440 standby charge and the terms and conditions under which it is assessed shall be in accordance with a
441 methodology developed by the supplier and approved by the Commission. The Commission shall approve a
442 supplier's proposed standby charge methodology if it finds that the standby charges collected from all such
443 eligible customer-generators allow the supplier to recover only the portion of the supplier's infrastructure
444 costs that are properly associated with serving such eligible customer-generators. Such an eligible customer-
445 generator shall not be liable for a standby charge until the date specified in an order of the Commission
446 approving its supplier's methodology.

447 I. Any eligible agricultural customer-generator interconnected in an electric cooperative service territory
448 prior to July 1, 2019, shall continue to be governed by § 56-594 and the regulations adopted pursuant thereto
449 throughout the grandfathering period described in subsection A of § 56-594.

450 J. Any eligible customer-generator served by a competitive service provider pursuant to the provisions of
451 § 56-577 shall engage in net energy metering only with such supplier and pursuant only to tariffs filed by

452 such supplier. Such an eligible customer-generator shall pay the full portion of its distribution charges,
453 without offset or netting, to its electric cooperative.

454 K. After the conclusion of the Commission's rulemaking proceeding pursuant to subsection L, third-party
455 partial requirements power purchase agreements, the purpose of which is to finance the purchase of
456 renewable generation facilities by eligible customer-generators through the sale of electricity, shall be
457 permitted pursuant to the provisions of this section only for those retail customers and nonjurisdictional
458 customers of the electric cooperative that are exempt from federal income taxation, unless otherwise
459 permitted by § 56-585.4 or subsection M. No person shall offer a third-party partial requirements power
460 purchase agreement in the service territory of an electric cooperative without fulfilling the registration
461 requirements set forth in this section and complying with applicable Commission rules, including those
462 adopted pursuant to subdivision L 2.

463 L. After August 1, 2019, but before January 1, 2020, the Commission shall initiate a rulemaking
464 proceeding to promulgate the regulations necessary to implement this section as follows:

465 1. In conducting such a proceeding, the Commission may require notice to be given to current eligible
466 customer-generators and eligible agricultural customer-generators but shall not require general publication of
467 the notice. An opportunity to request a hearing shall be afforded, but a hearing is not required. In the
468 rulemaking proceeding, the electric cooperatives governed by this section shall be required to submit
469 compliance filings, but no other individual proceedings shall be required or conducted.

470 2. In promulgating regulations to govern third-party power purchase agreement providers as retail sellers,
471 the Commission shall:

472 a. Direct the staff to administer a registration system for such providers;

473 b. Enumerate in its regulations the jurisdiction of the Commission over providers, generally limited in
474 scope to the behavior of providers, customer complaints, and their compliance with the registration
475 requirements and stating clearly that civil contract disputes and claims for damages against providers shall
476 not be subject to the jurisdiction of the Commission;

477 c. Enumerate in its regulations the maximum extent of its authority over the providers, to be limited to any
478 or all of:

479 (1) Monetary penalties against registered providers not to exceed \$30,000 per provider registration;

480 (2) Orders for providers to cease or desist from a certain practice, act, or omission;

481 (3) Debarment of registered providers;

482 (4) The issuance of orders to show cause; and

483 (5) Authority incident to subdivisions (1) through (4);

484 d. Delineate in its regulations two classes of providers, one for residential customers and one for

485 nonresidential customers;

486 e. Direct the staff to set up a self-certification system as described in this subdivision;

487 f. Establish business practice and consumer protection standards from a national renewable energy

488 association whose business is germane to the businesses of the providers;

489 g. Require providers to comply with other applicable Commission regulations governing interconnection

490 and safety, including utility procedures governing the same;

491 h. Require minimum capitalization or other bond or surety that, in the judgment of the Commission, is

492 necessary for adequate consumer protection and in the public interest;

493 i. Require the payment of a fee of \$250 for residential and nonresidential provider registration; and

494 j. Provide that no registered provider, by virtue of that status alone, shall be considered a public utility or

495 competitive service provider for purposes of this title.

496 3. The self-certification system described in this subdivision shall require a provider to affirm to the staff,

497 under the penalty of revocation of registration, (i) that it is licensed to do business in Virginia; (ii) the names

498 of the responsible officers of the provider entity; (iii) that its named officers have no felony convictions or

499 convictions for crimes of moral turpitude; (iv) that it will abide by all applicable Commission regulations

500 promulgated under this section or for purposes of interconnections and safety; (v) that it will appoint an

501 officer to be a primary liaison to the staff; (vi) that it will appoint an employee to be a primary contact for

502 customer complaints; (vii) that it will have and disclose to customers a dispute resolution procedure; (viii)

503 that it has specified in its registration materials in which territories it intends to offer power purchase

504 agreements; (ix) that it, and each of its named officers, agree to submit themselves to the jurisdiction of the

505 Commission as described in this subdivision; and (x) that, once registered, the provider shall report any

506 material changes in its registration materials to the staff, as a continuing obligation of registration. The staff

507 shall send a copy of the registration materials to each cooperative in whose territory the provider intends to

508 offer power purchase agreements. The staff, once satisfied that the certifications required pursuant to this

509 subdivision are complete, and not more than 30 days following the initial and complete submittal of the

510 registration materials, shall enter the provider onto the official register of providers. No formal Commission

511 proceeding is required for registration but may be initiated if the staff (a) has reason to doubt the veracity of

512 the certifications of the provider or (b) in any other case, if, in the judgment of the staff, extenuating or
513 extraordinary circumstances exist that warrant a proceeding. The staff shall not investigate the corporate
514 structure, financing, bookkeeping, accounting practices, contracting practices, prices, or terms and conditions
515 in a third-party partial requirements power purchase agreement. Nothing in this section shall abridge the right
516 of any person, including the Office of Attorney General, from proceeding in a cause of action under the
517 Virginia Consumer Protection Act, § 59.1-196 et seq.

518 4. The Commission shall complete such rulemaking procedure within 12 months of its initiation.

519 M. An electric cooperative may, without approval of the Commission or the requirement of any filing
520 other than as provided in this subsection, and upon the adoption by its board of directors of a resolution so
521 providing, permit the use of any third-party partial requirements power purchase agreement, the purpose of
522 which agreement is to finance the purchase of renewable generation facilities by eligible customer-generators
523 through the sale of electricity for residential retail customers, nonresidential retail customers, or both. The
524 electric cooperative shall promptly file a revised net energy metering compliance filing with the Commission
525 for informational purposes.

526 **§ 56-594.2. Small agricultural generators.**

527 A. As used in this section:

528 "Small agricultural generating facility" means an electrical generating facility that:

529 1. Has a capacity:

530 a. Of not more than 1.5 megawatts; and

531 b. That does not exceed 150 percent of the customer's expected annual energy consumption based on the
532 previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing
533 history is not available;

534 2. Uses as its total source of fuel renewable energy;

535 3. Is located on the customer's premises and is interconnected with its utility through a separate meter;

536 4. Is interconnected and operated in parallel with an electric utility's distribution but not transmission
537 facilities;

538 5. Is designed so that the electricity generated by the facility is expected to remain on the utility's
539 distribution system; and

540 6. Is a qualifying small power production facility pursuant to the Public Utility Regulatory Policies Act of
541 1978 (P.L. 95-617); and

542 7. *Is not a small portable solar generation device as defined in § 56-596.7.*

543 "Small agricultural generator" means a customer that:

544 1. Is not an eligible agricultural customer-generator pursuant to § 56-594;

545 2. Operates a small agricultural generating facility as part of (i) an agricultural business or (ii) any
546 business granted a manufacturer license pursuant to subdivisions 1 through 6 of § 4.1-206.1;

547 3. May be served by multiple meters that are located at separate but contiguous sites;

548 4. May aggregate the electricity consumption measured by the meters, solely for purposes of calculating
549 150 percent of the customer's expected annual energy consumption, but not for billing or retail service
550 purposes, provided that the same utility serves all of its meters;

551 5. Uses not more than 25 percent of contiguous land owned or controlled by the agricultural business for
552 purposes of the renewable energy generating facility; and

553 6. Issues a certification under oath as to the amount of land being used for renewable generation.

554 "Utility" includes supplier or distributor, as applicable.

555 B. A small agricultural generator electing to interconnect pursuant to this section shall:

556 1. Enter into a power purchase agreement with its utility to sell all of the electricity generated from its
557 small agricultural generating facility, which power purchase agreement obligates the utility to purchase all the
558 electricity generated, at a rate agreed upon by the parties, but at a rate not less than the utility's Commission-
559 approved avoided cost tariff for energy and capacity;

560 2. Have the rights described in subsection E of § 56-594 pertaining to an eligible agricultural
561 customer-generator as to the renewable energy certificates or other environmental attributes generated by the
562 renewable energy generating facility;

563 3. Abide by the appropriate small generator interconnection process as described in 20VAC5-314; and

564 4. Pay to its utility any necessary additional expenses as required by this section.

565 C. Utilities:

566 1. Shall purchase, through the power purchase agreement described in subdivision B 1, all of the output of
567 the small agricultural generator;

568 2. Shall recover the cost for its distribution facilities to the generating meter either through a proportional
569 cost-sharing agreement with the small agricultural generator or through metering the total capacity and
570 energy placed on the distribution system by the small agricultural generator;

571 3. Shall recover all costs incurred by the utility to purchase electricity, capacity, and renewable energy
572 certificates from the small agricultural generator:

573 a. If the utility has a Commission-approved Renewable Energy Portfolio Standard (RPS) plan and rate
574 adjustment clause, through the utility's RPS rate adjustment clause; or

575 b. If the utility does not have a Commission-approved RPS rate adjustment clause, through the utility's
576 fuel adjustment clause or through the utility's cost of purchased power;

577 4. May conduct settlement transactions for purchased power in dollars on the small agricultural
578 generator's electric bill or through other means of settlement, in the utility's sole discretion;

579 5. Shall bill the small agricultural generator eligible costs for small generator interconnection studies
580 required pursuant to the appropriate small generator interconnection process described in subdivision B 3;
581 and

582 6. Shall bill its expenses, at cost, for any additional engineering studies that a small agricultural generator
583 is required to pay prior to interconnection.

584 ***§ 56-596.7. Small portable solar generation devices; exempt from interconnection.***

585 A. *As used in this section, "small portable solar generation device" means a moveable photovoltaic
586 generation device that (i) has a maximum power output of not more than 1,200 watts per customer or, in the
587 case of multi-family housing, per residential building unit; (ii) is designed to be connected to the electrical
588 system of a building through a standard outlet; (iii) is located on the customer's side of the electric meter and
589 intended primarily to offset part of the customer's electricity consumption; (iv) meets the standards of the
590 most recent version of the National Electrical Code; and (v) is certified by a nationally recognized testing
591 laboratory, as described in 29 C.F.R. § 1910.7, or an equivalent nationally recognized testing laboratory.*

592 B. *Any customer of an electric service provider may own and operate a small portable solar generation
593 device that meets the requirements of this section without being subject to interconnection requirements, net
594 energy metering provisions, or any other provision of law requiring reimbursement to or approval from the
595 electric utility to own and operate the small portable solar generation device. No electric service provider
596 shall require a customer using a small portable solar generation device to obtain the electric service
597 provider's approval before installing or using the device, pay any fee or charge related to the device, or
598 install any additional controls or equipment beyond what is integrated with the device, but an electric service
599 provider may require a residential customer to provide notice prior to installing a small portable solar
600 generation device. Such notice, if required, may be submitted online or by mail.*

601 *C. If a residential customer installs more than one small portable solar generation device at a single*
602 *property, an electric service provider may install a lockable, load-breaking disconnect switch at such*
603 *property at no cost to the residential customer.*

604 *D. A customer that owns and operates a small portable solar generation device shall ensure that the*
605 *device includes a device or feature that prevents the device from exporting power to the electric grid or from*
606 *affecting the electrical system of the building during a power outage.*

607 *E. No investor-owned utility, municipal utility, or electric cooperative shall be liable for any damage,*
608 *injury, or interruption in electric service caused by a small portable solar generation device.*