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HOUSE BILL NO. 1491
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on _____)
(Patron Prior to Substitute—Delegate Singh)

A BILL to amend and reenact § 56-46.1 of the Code of Virginia, relating to electric utilities; construction of certain electrical transmission lines; siting requirements.

Be it enacted by the General Assembly of Virginia:

1. That § 56-46.1 of the Code of Virginia is amended and reenacted as follows:

§ 56-46.1. Commission to consider environmental, economic, and improvements in service reliability factors in approving construction of electrical utility facilities; approval required for construction of certain electrical transmission lines; notice and hearings.

A. Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state, or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223

33 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (a) shall consider the effect of the
34 proposed facility on economic development within the Commonwealth, including but not limited to
35 furtherance of the economic and job creation objectives of the Commonwealth Clean Energy Policy set forth
36 in § 45.2-1706.1, and (b) shall consider any improvements in service reliability that may result from the
37 construction of such facility.

38 B. Subject to the provisions of subsection J, no electrical transmission line of 138 kilovolts or more shall
39 be constructed unless the State Corporation Commission shall, after at least 30 days' advance notice by (i)
40 publication in a newspaper or newspapers of general circulation in the counties and municipalities through
41 which the line is proposed to be built, (ii) written notice to the governing body of each such county and
42 municipality, and (iii) causing to be sent a copy of the notice by first class mail to all owners of property
43 within the route of the proposed line, as indicated on the map or sketch of the route filed with the
44 Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as
45 are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of
46 the county or municipality, approve such line. Such notices shall include a written description of the proposed
47 route the line is to follow, as well as a map or sketch of the route including a digital geographic information
48 system (GIS) map provided by the public utility showing the location of the proposed route. The Commission
49 shall make GIS maps provided under this subsection available to the public on the Commission's website.
50 Such notices shall be in addition to the advance notice to the chief administrative officer of the county or
51 municipality required pursuant to § 15.2-2202.

52 As a condition to approval the Commission shall determine that the line is needed and that the corridor or
53 route chosen for the line will avoid or reasonably minimize adverse impact to the greatest extent reasonably
54 practicable on *dwelling houses and on* the scenic assets, historic and cultural resources recorded with the
55 Department of Historic Resources, cultural resources identified by federally recognized Tribal Nations in the
56 Commonwealth, and environment of the area concerned. To assist the Commission in this determination, as
57 part of the application for Commission approval of the line, the applicant shall summarize its efforts to avoid
58 or reasonably minimize adverse impact to the greatest extent reasonably practicable on *dwelling houses and*
59 *on* the scenic assets, historic resources recorded with the Department of Historic Resources, and environment
60 of the area concerned. In making the determinations about need, corridor or route, and method of installation,
61 the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs
62 presented to justify the new line and its proposed method of installation. If the local comprehensive plan of an
63 affected county or municipality designates corridors or routes for electric transmission lines and the line is

64 proposed to be constructed outside such corridors or routes, in any hearing the county or municipality may
65 provide adequate evidence that the existing planned corridors or routes designated in the plan can adequately
66 serve the needs of the company. Additionally, the Commission shall consider, upon the request of the
67 governing body of any county or municipality in which the line is proposed to be constructed, (a) the costs
68 and economic benefits likely to result from requiring the underground placement of the line and (b) any
69 potential impediments to timely construction of the line. *For new overhead transmission lines of 500 kilovolts
70 or more constructed by a Phase II Utility, as that term is defined in subdivision A 1 of 56-585.1, the
71 Commission shall prioritize approving corridors or routes for construction pursuant to this subsection for
72 which the center of such corridor or route is located further than 150 feet from any dwelling house, public or
73 private school building, day care, or place of worship building unless no other practicable alternative exists.*

74 C. If, prior to such approval, any interested party shall request a public hearing, the Commission shall, as
75 soon as reasonably practicable after such request, hold such hearing or hearings at such place as may be
76 designated by the Commission. In any hearing, the public service company shall provide adequate evidence
77 that existing rights-of-way cannot adequately serve the needs of the company.

78 If, prior to such approval, written requests therefor are received from the governing body of any county or
79 municipality through which the line is proposed to be built or from 20 or more interested parties, the
80 Commission shall hold at least one hearing in the area that would be affected by construction of the line, for
81 the purpose of receiving public comment on the proposal. If any hearing is to be held in the area affected, the
82 Commission shall direct that a copy of the transcripts of any previous hearings held in the case be made
83 available for public inspection at a convenient location in the area for a reasonable time before such local
84 hearing.

85 D. As used in this section, unless the context requires a different meaning:

86 "Environment" or "environmental" shall be deemed to include in meaning "historic," as well as a
87 consideration of the probable effects of the line on the health and safety of the persons in the area concerned.

88 "Interested parties" includes the governing bodies of any counties or municipalities through which the line
89 is proposed to be built and persons residing or owning property in each such county or municipality.

90 "Public utility" means a public utility as defined in § 56-265.1.

91 "Qualifying facilities" means a cogeneration or small power production facility that meets the criteria of
92 18 C.F.R. Part 292.

93 "Reasonably accommodate requests to wheel or transmit power" means:

94 1. That the applicant will make available to new electric generation facilities constructed after January 9,
95 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total megawatts of the
96 additional transmission capacity created by the proposed line, for the purpose of wheeling to public utility
97 purchasers the power generated by such qualifying facilities and other nonutility facilities which are awarded
98 a power purchase contract by a public utility purchaser in compliance with applicable state law or regulations
99 governing bidding or capacity acquisition programs for the purchase of electric capacity from nonutility
100 sources, provided that the obligation of the applicant will extend only to those requests for wheeling service
101 made within the 12 months following certification by the State Corporation Commission of the transmission
102 line and with effective dates for commencement of such service within the 12 months following completion
103 of the transmission line; and

104 2. That the wheeling service offered by the applicant, pursuant to subdivision 1, will reasonably further
105 the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L. 95-617), as demonstrated by
106 submitting to the Commission, with its application for approval of the line, the cost methodologies, terms,
107 conditions, and dispatch and interconnection requirements the applicant intends, subject to any applicable
108 requirements of the Federal Energy Regulatory Commission, to include in its agreements for such wheeling
109 service.

110 E. In the event that, at any time after the giving of the notice required in subsection B, it appears to the
111 Commission that consideration of a route or routes significantly different from the route described in the
112 notice is desirable, the Commission shall cause notice of the new route or routes to be published and mailed
113 in accordance with subsection B. The Commission shall thereafter comply with the provisions of this section
114 with respect to the new route or routes to the full extent necessary to give affected localities, federally
115 recognized Tribal Nations in the Commonwealth, and interested parties in the newly affected areas the same
116 protection afforded to affected localities and interested parties affected by the route described in the original
117 notice.

118 F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the requirements of
119 § 15.2-2232 and local zoning ordinances with respect to such transmission line.

120 G. The Commission shall enter into a memorandum of agreement with the Department of Environmental
121 Quality regarding the coordination of their reviews of the environmental impact of electric generating plants
122 and associated facilities. If the proposed plants or associated facilities are in a locality identified by the
123 Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01, such consultation

124 information shall be included in the memorandum of agreement.

125 H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from the
126 Commission for any electric generating facility, electric transmission line, natural or manufactured gas
127 transmission line as defined in 49 C.F.R. § 192.3, or natural or manufactured gas storage facility (hereafter,
128 an energy facility) and (ii) an environmental permit for the energy facility that is subject to issuance by any
129 agency or board within the Secretariat of Natural and Historic Resources, may request a pre-application
130 planning and review process. In any such request to the Commission or the Secretariat of Natural and
131 Historic Resources, the applicant shall identify the proposed energy facility for which it requests the pre-
132 application planning and review process. The Commission, the Department of Environmental Quality, the
133 Marine Resources Commission, the Department of Wildlife Resources, the Department of Historic
134 Resources, the Department of Conservation and Recreation, and other appropriate agencies of the
135 Commonwealth shall participate in the pre-application planning and review process. Participation in such
136 process shall not limit the authority otherwise provided by law to the Commission or other agencies or boards
137 of the Commonwealth. The Commission and other participating agencies and boards of the Commonwealth
138 may invite federal and local governmental entities charged by law with responsibility for issuing permits or
139 approvals and potentially impacted federally recognized Tribal Nations in the Commonwealth to participate
140 in the pre-application planning and review process. Through the pre-application planning and review process,
141 the applicant, the Commission, participating agencies and boards of the Commonwealth, and potentially
142 impacted federally recognized Tribal Nations in the Commonwealth shall identify the potential impacts and
143 approvals that may be required and shall develop a plan that will provide for an efficient and coordinated
144 review of the proposed energy facility. The plan shall include (a) a list of the permits or other approvals likely
145 to be required based on the information available, (b) a specific plan and preliminary schedule for the
146 different reviews, (c) a plan for coordinating those reviews and the related public comment process, and (d)
147 designation of points of contact, either within each agency or for the Commonwealth as a whole, to facilitate
148 this coordination. The plan shall be made readily available to the public and shall be maintained on a
149 dedicated website to provide current information on the status of each component of the plan and each
150 approval process including opportunities for public comment.

151 I. The provisions of this section shall not apply to the construction and operation of a small renewable
152 energy project, as defined in § 10.1-1197.5, by a utility regulated pursuant to this title for which the

153 Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et seq.)
154 of Chapter 11.1 of Title 10.1.

155 J. Approval under this section shall not be required for any transmission line for which a certificate of
156 public convenience and necessity is not required pursuant to subdivision A of § 56-265.2.