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SENATE BILL NO. 163

Offered January 12, 2000

A BILL to amend and reenact §§ 58.1-2900, 58.1-2901, and 58.1-3814 of the Code of Virginia, relating to the taxation of electric energy.

Patron—Watkins

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2900, 58.1-2901, and 58.1-3814 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2900. (Effective January 1, 2001) Imposition of tax.

A. Effective January 1, 2001, there is hereby imposed, in addition to the local consumer utility tax of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 and subject to the adjustments authorized by subdivision A 5 and by § 58.1-2902, a tax on the consumers of electricity in the Commonwealth based on kilowatt hours delivered by the incumbent distribution utility and used per month as follows:

1. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month not in excess of 2,500 kWh at the rate of \$0.00155 per kWh, as follows:

| | | |
|---------------|---------------|---------------|
| State | Special | Local |
| consumption | regulatory | consumption |
| tax rate | tax rate | tax rate |
| \$0.00102/kWh | \$0.00015/kWh | \$0.00038/kWh |

2. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 2,500 kWh but not in excess of 50,000 kWh at the rate of \$0.00099 per kWh, as follows:

| | | |
|---------------|---------------|---------------|
| State | Special | Local |
| consumption | regulatory | consumption |
| tax rate | tax rate | tax rate |
| \$0.00065/kWh | \$0.00010/kWh | \$0.00024/kWh |

3. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 50,000 kWh at the rate of \$0.00075 per kWh, as follows:

| | | |
|---------------|---------------|---------------|
| State | Special | Local |
| consumption | regulatory | consumption |
| tax rate | tax rate | tax rate |
| \$0.00050/kWh | \$0.00007/kWh | \$0.00018/kWh |

4. The tax rates set forth in subdivisions 1, 2, and 3 in are in lieu of and replace the state gross receipts tax (§ 58.1-2626), the special regulatory revenue tax (§ 58.1-2660), and the local license tax (§ 58.1-3731) levied on corporations furnishing heat, light or power by means of electricity.

5. The tax on consumers under this section shall not be imposed on consumers served by an electric utility owned or operated by a municipality if such municipal electric utility elects to have an amount equivalent to the tax added on the bill such utility (or an association or agency of which it is a member) pays for bundled or unbundled transmission service as a separate item. Such amount, equivalent to the tax, shall be calculated under the tax rate schedule as if the municipal electric utility were selling and collecting the tax from its consumers, adjusted to exclude the amount which represents the local consumption tax if the locality in which a consumer is located does not impose a license fee rate pursuant to § 58.1-3731, and shall be remitted to the Commission pursuant to § 58.1-2901. Municipal electric utilities may bundle the tax in the rates charged to their retail customers. Notwithstanding anything contained herein to the contrary, the election permitted under this subdivision shall not be exercised by any municipal electric utility if the entity to whom the municipal electric utility (or an association or agency of which it is a member) pays for transmission service is not subject to the taxing jurisdiction of the Commonwealth, unless such entity agrees to remit to the Commonwealth all amounts equivalent to the tax pursuant to § 58.1-2901.

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B. The tax authorized by this chapter shall not apply to municipalities' own use or to use by divisions or agencies of federal, state and local governments.

C. *For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible customer-generators, as defined in § 56-594, those kilowatt hours supplied from the electric grid to such customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such customer-generators.*

§ 58.1-2901. (Effective January 1, 2001) Collection and remittance of tax.

A. The service provider shall collect the tax from the consumer by adding it as a separate charge to the consumer's monthly statement. Until the consumer pays the tax to such service provider, the tax shall constitute a debt of the consumer to the Commonwealth, localities, and the State Corporation Commission. If any consumer receives and pays for electricity but refuses to pay the tax on the bill that is imposed by § 59.1-2900, the service provider shall notify the State Corporation Commission and/or localities of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider including the tax that is imposed by § 59.1-2900, the service provider shall follow its normal collection procedures with respect to the charge for electric service and the tax, and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for electric service and the tax and (ii) remit the tax portion to the State Corporation Commission and the appropriate locality. After the consumer pays the tax to the service provider, the taxes collected shall be deemed to be held in trust by such provider until remitted to the State Corporation Commission and/or localities the appropriate locality.

B. A service provider shall remit monthly to the Commission the amount of tax paid during the preceding month by the service provider's consumers, except for (i) amounts added on the bills to utilities owned and operated by municipalities which are collected by the entity providing transmission directly to such utilities (or an association or agency of which the municipality is a member), which they shall remit directly to the Commission and (ii) the portion which represents the local consumption tax, which portion shall be remitted to the locality in which the electricity was consumed and shall be based on such locality's license fee rate which it imposed. Amounts of the tax that are added on the bills to utilities owned and operated by municipalities, which are collected by the entity providing transmission directly to such utilities (or an association or agency of which the municipality is a member), shall be remitted monthly by such entity to the Commission, except that the portion which represents the local consumption tax shall be remitted to the locality in which the electricity was consumed and shall be based on such locality's license fee rate which it imposed.

C. The electric utility consumption tax shall be remitted monthly, on or before the last day of the succeeding month of collection. Those portions of the electric utility consumption tax that relate to the state consumption tax and the special regulatory tax shall be remitted to the Commission; the portion that relates to the local consumption tax shall be remitted to the localities. Failure to remit timely will result in a ten percent penalty.

D. Taxes on electricity sales in the year ending December 31, 2000, relating to the local consumption tax, shall be paid in accordance with § 58.1-3731. Monthly payments in accordance with subsection C shall commence on February 28, 2001.

E. For purposes of this section, "service provider" means the person who delivers electricity to the consumer.

F. The portion of the electric utility consumption tax relating to the local consumption tax replaces and precludes localities from imposing a license tax in accordance with § 58.1-3731 and the business, professional, occupation and license tax in accordance with Chapter 37 (§ 58.1-3700 et seq.) on electric suppliers subsequent to December 31, 2000, except as provided in subsection D. If the license fee rate imposed by a locality is less than the equivalent of the local consumption tax rate component of the consumption tax paid under subsection A of § 58.1-2900, the excess collected by the Commission shall constitute additional state consumption tax revenue and shall be remitted by the Commission to the state treasury.

G. The Department of Taxation may audit the books and records of any electric utility owned and operated by a municipality (or an association or agency of which the municipality is a member) to verify that the tax imposed by this chapter has been correctly determined and properly remitted to the Commission.

§ 58.1-3814. Water or heat, light and power companies.

A. Any county, city or town may impose a tax on the consumers of the utility service or services provided by any water or heat, light and power company or other corporations coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.), which tax shall not be imposed at a rate in excess of twenty percent of the monthly amount charged to consumers of the utility service and shall not be applicable to any amount so charged in excess of fifteen dollars per month for residential customers. Any city, town or county that on July 1, 1972, imposed a utility consumer tax in excess of limits specified herein may continue to impose such a tax in excess of such limits, but no more. *For taxable*

years beginning on and after January 1, 2001, any tax imposed by a county, city or town on consumers of electricity shall be imposed pursuant to subsections C through H of this section only.

B. Any tax enacted pursuant to the provisions of this section, or any change in a tax or structure already in existence, shall not be effective until sixty days subsequent to written notice by certified mail from the county, city or town imposing such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.

C. Any county, city or town may impose a tax on the consumers of services provided within its jurisdiction by any electric light and power, water or gas company owned by another municipality; provided, that no county shall be authorized under this section to impose a tax within a municipality on consumers of services provided by an electric light and power, water or gas company owned by that municipality. Any county tax imposed hereunder shall not apply within the limits of any incorporated town located within such county which town imposes a town tax on consumers of utility service or services provided by any corporation coming within the provisions of Chapter 26, provided that such town (i) provides police or fire protection, and water or sewer services, provided that any such town served by a sanitary district or service authority providing water or sewer services or served by the county in which the town is located when such service or services are provided pursuant to an agreement between the town and county shall be deemed to be providing such water and sewer services itself, or (ii) constitutes a special school district and is operated as a special school district under a town school board of three members appointed by the town council.

Any county, city or town may provide for an exemption from the tax for any public safety agency as defined in § 58.1-3813.

Any city with a population of not less than 27,000 and not more than 28,500 may provide an exemption from the tax for any church or religious body entitled to an exemption pursuant to Article 4 (§ 58.1-3650 et seq.) of Chapter 36.

Any municipality required to collect a tax imposed under authority of this section for another city or county or town shall be entitled to a reasonable fee for such collection.

D. In a consolidated county wherein a tier-city exists, any county tax imposed hereunder shall apply within the limits of any tier-city located in such county, as may be provided in the agreement or plan of consolidation, and such tier-city may impose a tier-city tax on the same consumers of utility service or services, provided that the combined county and tier-city rates do not exceed the maximum permitted by state law.

E. The tax authorized by this section shall not apply to utility sales of products used as motor vehicle fuels.

~~F. For taxable years beginning on and after January 1, 2001, any~~ Any county, city or town may impose a tax on consumers of electricity provided by electric suppliers as defined in § 58.1-400.2. ~~which shall not be imposed at a rate in excess of \$.015 (1 1/2 cent) per kWh billed monthly to consumers of electricity and shall not be applicable to any kilowatt hours billed in excess of 200 kWh per month for residential customers. In any county, city or town that imposes a consumer utility tax immediately prior to January 1, 2001, (i) on residential customers at a higher rate than the maximum rate on residential customers under this section because the rate of consumer utility tax it imposed on July 1, 1972, exceeded the limits specified in subsection A or (ii) on other consumers not subject to the maximum rate set by this section, the service provider shall convert the dollar amount rate to a kWh rate of tax be based on the monthly tax that is being collected immediately prior to January 1, 2001. However, nothing in this section shall be construed to prohibit or limit any county, city or town, after completion of the transition period on January 1, 2004, from imposing a consumer utility tax on nonresidential customers (as converted to a per kWh rate basis) in any amounts authorized by this section immediately prior to July 1, 1999. The service provider shall bill the tax to all users to whom it delivers electricity, and shall remit such tax to the appropriate locality in accordance with § 58.1-2901. The provisions of this subsection shall be applicable without the necessity of the locality amending or reenacting its existing ordinance imposing such tax.~~

Subsection B shall apply to any tax on the consumers of electricity enacted or amended pursuant to this section, except that the notice provided therein shall be given to the registered agent of the service provider that is required to collect the tax. *The tax so imposed shall be based on kilowatt hours delivered monthly to consumers, and shall not exceed the limits set forth in this subsection. The service provider shall bill the tax to all users who are subject to the tax and to whom it delivers electricity, and shall remit such tax to the appropriate locality in accordance with § 58.1-2901. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of electricity shall convert its tax to a tax based on kilowatt hours delivered monthly to consumers, taking into account minimum billing charges. The kilowatt hour tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among electricity consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion.*

182 *Current service providers shall provide to localities no later than August 1, 2000, information to enable*
183 *localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result*
184 *of the conversion shall be limited to three dollars per month, except any locality that imposed a higher*
185 *maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential*
186 *consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as*
187 *converted to kilowatt hours. For non-residential consumers, the initial maximum rate of tax imposed as*
188 *a result of the conversion shall be based on the annual amount of revenue received from each class of*
189 *non-residential consumers in calendar year 1999 for the kilowatt hours used that year. Kilowatt hour*
190 *tax rates imposed on non-residential consumers shall be based at a class level on such factors as*
191 *existing minimum charges, the amount of kilowatt hours used, and the amount of consumer utility tax*
192 *paid in calendar year 1999 on the same kilowatt hour usage. The limitations in this section on kilowatt*
193 *hour rates for non-residential consumers shall not apply after January 1, 2004, which is the scheduled*
194 *date of completion of the electric deregulation transition period pursuant to the Virginia Electric Utility*
195 *Restructuring Act (§ 56-576 et seq.). On or before October 31, 2000, any locality imposing a tax on*
196 *consumers of electricity shall duly amend its ordinance under which such tax is imposed so that the*
197 *ordinance conforms to the requirements of subsections C through H of this section. Notice of such*
198 *amendment shall be provided to service providers in a manner consistent with subsection B of this*
199 *section except that "registered agent of the service provider" shall be substituted for "registered agent of*
200 *the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall*
201 *not be effective before the first meter reading after December 31, 2000, prior to which time the tax*
202 *previously imposed by the locality shall be in effect.*

203 *G. Until the consumer pays the tax to such service provider, the tax shall constitute a debt to the*
204 *locality. If any consumer receives and pays for electricity but refuses to pay the tax on the bill that is*
205 *imposed by a locality, the service provider shall notify the ~~localities~~ locality of the ~~names~~ name*
206 *and ~~addresses~~ address of such ~~consumers~~ consumer. If any consumer fails to pay a bill issued by a*
207 *service provider, including the tax imposed by a locality as stated thereon, the service provider shall*
208 *follow its normal collection procedures with respect to the charge for electric service and the tax, and*
209 *upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the*
210 *charge for electric service and the tax and (ii) remit the tax portion to the appropriate locality. After*
211 *the consumer pays the tax to the service provider, the taxes shall be deemed to be held in trust by such*
212 *service provider until remitted to the localities.*

213 *H. As used in this section, "service provider" has the same meaning as provided in subsection E of*
214 *§ 58.1-2901, and "class" of consumers means a category of consumers defined as a class by their*
215 *service provider.*