067044844

SENATE BILL NO. 278

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend the Code of Virginia by adding in Title 56 a chapter numbered 24, consisting of sections numbered 56-597 through 56-609, relating to the acquisition of electric energy generated from renewable and environmentally beneficial sources by electric energy suppliers.

Patron—Whipple

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 56 a chapter numbered 24, consisting of sections numbered 56-597 through 56-609, as follows:

CHAPTER 24.

RENEWABLE ENERGY PORTFOLIO STANDARDS.

§ 56-597. Definitions.

As used in this chapter:

"Biomass sources" means technologies that produce electricity utilizing closed-loop biomass or open-loop biomass.

"Category 1 energy sources" means the following sources of energy: (i) solar photovoltaic technology having a capacity of no more than 500 kilowatts; (ii) wind power technology having a capacity of no more than 500 kilowatts; (iii) hydropower having a capacity of no more than 500 kilowatts; (iv) the electricity generated by a customer-generator as determined pursuant to the program established pursuant to § 56-594; or (v) solar water heating that is not used for heating pools.

"Category 2 energy sources" means the following sources of energy: (i) wind power having a capacity greater than 500 kilowatts; (ii) hydropower having a capacity greater than 500 kilowatts if it does not use a dam or is low-impact hydropower; (iii) incremental hydropower having a capacity greater than 500 kilowatts but less than 30 megawatts; (iv) non-incremental hydropower that is developed coincident with the construction of a new dam whose primary purpose is something other than power production; (v) geothermal sources; (vi) ocean energy; (vii) combustible gases recovered from landfills; (viii) closed-loop biomass sources; (ix) combustible gases recovered from the anaerobic digestion of organic materials, including yard waste, such as grass clippings and leaves, food waste, animal waste, and sewage sludge; or (x) solar water heating for pools.

"Category 3 energy sources" means the following sources of energy: (i) municipal solid waste; (ii) open-loop biomass sources; or (iii) combustion of animal manure and animal bedding materials, such as poultry litter, that contain manure.

"Category 4 energy source" means electric energy savings from energy efficiency programs.

"Closed-loop biomass" means organic material from a plant that is grown for the purpose of being used to produce electricity or is protected by the federal Conservation Reserve Program (CRP) and provided further that crop production on CRP lands does not prevent achievement of the water quality protection, soil erosion prevention, or wildlife enhancement purposes for which the land was primarily set aside.

"Commission" means the State Corporation Commission.

"Cooperative" has the same meaning ascribed to it in § 56-576.

"Cost recovery period" means the longer of (i) the period during which wires charges may be assessed pursuant to § 56-583 or (ii) the period during which capped rates are in effect, but in no case shall the cost recovery period under this chapter extend beyond December 31, 2010.

"Customer-generator" means an eligible customer-generator as defined in subsection B of § 56-594.

"Department" means the Department of Environmental Quality.

"Distributor" has same meaning ascribed to it in § 56-576.

"Energy efficiency programs" means programs that manage the consumption or the demand for electricity through energy efficiency technologies, management practices, or other strategies implemented by residential, commercial, institutional, or government customers that reduce electricity consumption by those customers.

"Generator" has same meaning ascribed to it in § 56-576.

"Geothermal sources" means technologies that produce electricity by extracting heat from geothermal reserves in the earth's crust.

"Incremental hydropower" means new hydroelectric generating capacity added to existing

hydroelectric generation stations or added to existing dams and impoundments that:

a. Does not adversely change existing impacts to aquatic systems;

b. Provides an adequate water flow for protection of aquatic life and for safe and effective fish passage;

c. Protects against erosion; and

d. Protects cultural and historic resources

"Landfill gas" means methane and other combustible gases recovered from the anaerobic decomposition of organic materials in a landfill.

"Low-impact hydropower" means hydroelectric generating capacity that meets the certification standards established by the Low Impact Hydropower Institute or American Rivers, Inc., or one of their successors.

"Municipal solid waste" includes energy from existing waste-to-energy facilities that the Department has determined are in compliance with current environmental standards, including, but not limited to, all applicable requirements of the Clean Air Act (69 Stat. 322, 42 U.S.C. § 7401 et seq.) and associated permit restrictions, and all applicable requirements of the act of July 7, 1980 (P.L. 380, No. 97), known as the Solid Waste Management Act.

"Net metering" has the same meaning ascribed to it in § 56-594.

"Ocean energy" means electricity derived from ocean energy including wave or tidal action, currents, or thermal differences.

"Open-loop biomass" means any solid nonhazardous, cellulosic waste material, such as forestry residues; waste pallets; crates; landscape, right-of-way, or agricultural tree trimmings and cullings, including trimmings and cullings from orchards and vineyards; and by-products or residues from the production and processing of grains, legumes, sugars, and other crops, that is segregated from other waste materials.

"Recoverable costs" means:

1. All costs of electricity that is voluntarily acquired by a distributor during the cost recovery period on behalf of its customers and generated from renewable energy sources, including the costs of the regional transmission organization, in excess of the regional transmission organization real-time locational marginal pricing, or its successor, at the delivery point of the renewable energy source for the electrical production of the renewable energy; and

2. All payments for renewable energy credits that are voluntarily acquired by a distributor during the cost recovery period on behalf of its customers.

"Regional transmission organization" means an entity approved by the Federal Energy Regulatory Commission (FERC) that is created to operate and manage the electrical transmission grids of the member electric transmission utilities as required under FERC Order 2000, Docket No. RM99-2-000, FERC Chapter 31.089 (1999) or any successor organization approved by the FERC.

"Renewable energy credit" means a tradable instrument that is used to establish, verify, and monitor compliance with this act. One renewable energy credit shall represent one Megawatt hour of electricity from a renewable energy source, whether self-generated or purchased with the electric commodity or separately through a tradable instrument, that complies with the requirements of the program administrator and of Commission regulations pursuant to § 56-600.

"Renewable energy" means the energy from sources included in the definitions of Category 1, Category 2, Category 3, and Category 4 energy sources.

"Renewable energy system" means a facility or energy system that uses a form of renewable energy to generate electricity.

"Reporting year" means the 12-month period from June 1 through May 31. A reporting year shall be numbered according to the calendar years in which it begins and ends.

"Retail customer" has the same meaning ascribed to it in § 56-576.

"Solar energy technologies" means technologies that employ solar radiation to produce electricity, heat, or both.

"Supplier" has the same meaning ascribed to it in § 56-576.

"True-up period" means the period each year from the end of the reporting year until the next following September 1.

"Wind energy" means electricity derived from wind.

§ 56-598. Renewable energy portfolio standards; electric energy generation requirements by class; cost recovery.

A. During each reporting year commencing on or after July 1, 2006, the electric energy sold by a supplier to retail customers in the Commonwealth shall be comprised of electricity generated from renewable energy sources in the percentage amounts specified for such year, as set forth in subsection B.

B. By reporting year 2015/2016, 20% of the electric energy sold by a supplier to retail customers in the Commonwealth shall be generated from renewable energy sources, as follows:

1. The minimum percentage of electric energy sold by a supplier to retail customers in this Commonwealth that shall be generated from Category 1 energy sources by specific dates is as follows:

a. By reporting year 2006/2007, 0.010%.

b. By reporting year 2007/2008, 0.025%.

c. By reporting year 2008/2009, 0.050%.

d. By reporting year 2009/2010, 0.075%.

e. By reporting year 2010/2011, 0.100%.

f. By reporting year 2011/2012, 0.130%.

g. By reporting year 2012/2013, 0.170%.

h. By reporting year 2013/2014, 0.200%.

i. By reporting year 2014/2015, 0.250%.

j. By reporting year 2015/2016 and in subsequent reporting years, 0.300%.

2. The minimum percentage of the electric energy sold by a supplier to retail customers in the Commonwealth that shall be generated from Category 2 energy sources by specific dates is as follows:

a. By reporting year 2006/2007, 1.0%.

b. By reporting year 2007/2008, 1.5%.

c. By reporting year 2008/2009, 1.8%.

d. By reporting year 2009/2010, 3.0%.

e. By reporting year 2010/2011, 4.25%.

f. By reporting year 2011/2012, 5.5%.

g. By reporting year 2012/2013, 6.9%.

h. By reporting year 2013/2014, 8.3%.

i. By reporting year 2014/2015, 9.7%.

j. By reporting year 2015/2016 and in subsequent reporting years, 11.2%.

3. The minimum percentage of electric energy sold by a supplier to retail customers in this Commonwealth that shall be generated from Category 3 energy sources by specific dates is as follows:

a. By reporting year 2006/2007, 2.33%.

b. By reporting year 2007/2008, 2.43%.

c. By reporting year 2008/2009, 2.63%.

d. By reporting year 2009/2010, 2.90%.

e. By reporting year 2010/2011, 3.16%.

f. By reporting year 2011/2012, 3.34%.

g. By reporting year 2012/2013, 3.43%.

h. By reporting year 2013/2104, 3.50%.

i. By reporting year 2014/2015, 3.50%.

j. By reporting year 2015/2016 and in subsequent reporting years, 3.50%.

4. The minimum percentage of electric energy sold by a supplier to retail customers in this Commonwealth that shall be generated from the Category 4 energy source by specific dates is as follows:

a. By reporting year 2006/2007, 0.5%.

b. By reporting year 2007/2008, 1.0%.

c. By reporting year 2008/2009, 1.5%.

d. By reporting year 2009/2010, 2.0%.

e. By reporting year 2010/2011, 2.5%.

f. By reporting year 2011/2012, 3.0%.

g. By reporting year 2012/2013, 3.5%.

h. By reporting year 2013/2014, 4.0%.

i. By reporting year 2014/2015, 4.5%.

j. By reporting year 2015/2016 and in subsequent reporting years, 5.0%.

C. Notwithstanding any provision of this section to the contrary, a supplier shall be excused from its obligations under this section to the extent that the Commission determines pursuant to § 56-606 that renewable energy resources are not reasonably available in sufficient quantities in the marketplace for the suppliers to meet their obligations under this chapter.

D. All recoverable costs shall be deferred as a regulatory asset by the distributor and fully recovered, with a return on the unamortized balance, pursuant to the procedure for recovery of the costs of power purchases set forth in § 56-249.6, in the first year after the expiration of its cost recovery period. After the cost recovery period, any direct or indirect costs for the purchase by distributors of resources to comply with this section, including, but not limited to, recoverable costs, cost of credits banked, payments to any third-party administrators for performance under this chapter, and costs levied by a regional transmission organization to ensure that renewable energy sources are reliable, shall be recovered on a full and current basis pursuant to the procedure for recovery of the costs of power

purchases set forth in § 56-249.6.

§ 56-599. Exemption during capped rate period.

Compliance with § 56-598 shall not be required for any distributor that has not reached the end of its capped rate period pursuant to § 56-582 or for any sales by a generator in the service territory of a distributor that has not reached the end of its capped rate period. At the conclusion of a distributor's capped rate period, this exception shall no longer apply, and compliance shall be required at the percentages in effect at that time. Suppliers whose sales are exempted under this subsection and who voluntarily sell electricity generated from Category 1, Category 2, Category 3, and Category 4 energy sources during the capped rate period may bank credits consistent with subsection I of § 56-600.

§ 56-600. Renewable energy credits.

A. The Commission shall establish a renewable energy credits program and shall appoint a renewable energy credits program administrator as needed to implement this chapter.

B. Generators seeking to participate in the renewable energy credits program may apply to the Commission for qualification either directly or through designated agents.

C. The Commission shall establish a procedure to determine whether generator applicants qualify for renewable energy credits.

D. For all other renewable energy credit program functions, the Commission shall appoint an independent entity to provide the renewable energy credits tracking and reporting services. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the approval by the Commission of such a renewable energy credits service provider.

E. The administrator and service provider shall have those powers and duties assigned by Commission regulations. Such powers and duties shall include, but not be limited to, the following:

1. To create and administer a renewable energy credits certification, tracking, and reporting program. This program should include, at a minimum, a process for qualifying renewable energy systems, including systems that use qualifying renewable energy resources as co-fuels, and determining when and how renewable energy credits shall be created, accounted for, transferred, and retired; and

2. To submit reports to the Commission at such times and in such manner as the Commission shall direct.

F. The Commission shall establish procedures for verifying the production of renewable energy credits by qualifying systems.

G. A supplier shall comply with the requirements of § 56-598 by self-generating or purchasing sufficient renewable energy credits and submitting documentation of such compliance to the program administrator.

H. The renewable energy credits program shall include a true-up period during which suppliers may obtain the required number of renewable energy credits in the marketplace to make up for any shortfall of renewable energy credits they might otherwise experience. The true-up period provisions shall also include a provision for modification of the underlying obligation of the supplier upon a finding by the Commission pursuant to § 56-606 that renewable energy credits are not reasonably available in sufficient quantities in the marketplace for suppliers to meet their obligations under this chapter.

I. A supplier may bank or place in reserve renewable energy credits produced in one reporting year for compliance in the next reporting year, subject to the limitations set forth in this subsection and provided that such supplier is in compliance for all previous reporting years. In addition, the supplier shall demonstrate to the satisfaction of the Commission that such credits:

1. Were in excess of the renewable energy credits needed by the supplier for compliance in the year in which they were generated and that such excess credits have not previously been used for compliance under this chapter; and

2. Have not otherwise been nor will be sold, retired, claimed, or represented as part of satisfying compliance with alternative or renewable energy portfolio standards in other states.

J. The Commission or its designee shall develop a registry of pertinent information regarding all available renewable energy credits and the number of renewable energy credits sold or transferred. The registry shall be available to the general public, but shall not include nor disclose any competitively sensitive information such as the names of parties to specific transactions, the number of renewable energy credits created, purchased, or owned by any specific party, or the price received or paid for renewable energy credits by any specific party, unless the party so-named agrees to inclusion or disclosure, or both, of such information, except as the inclusion or disclosure, or both, of such information may be necessary to demonstrate compliance with other portions of this chapter or to compute the cost of service for cost-based rate tariffs.

K. The Commission shall establish a procedure to determine how to recover the actual costs of administering the renewable energy credits program in a way that achieves a reasonable balance between equitable cost apportionment and cost efficiency.

L. The Commission shall establish regulations governing the verification and tracking of energy efficiency programs pursuant to this chapter, which shall include benefits to each utility customer class.

All verified energy efficiency improvements shall accrue credits beginning on July 1, 2006.

M. The Commission shall, no later than January 1, 2007, develop a depreciation schedule for renewable energy credits created through energy efficiency measures and shall develop standards for tracking and verifying savings from energy efficiency measures. The Commission shall allow for a 60-day public comment period and shall issue final standards for the depreciation schedule within 60 days of the close of the public comment period.

§ 56-601. Virginia Sustainable Energy Fund established.

There is hereby established a special fund in the state treasury to be known as the Virginia Sustainable Energy Fund (the Fund), which shall be administered by the Commission. The Fund shall include all alternative compliance payments collected by the Commission pursuant to § 56-602 and such moneys as may be appropriated by the General Assembly from time to time and designated for the Fund. The Fund shall be used solely for the payment of grants for projects that will increase the amount of electric energy generated from renewable energy resources in the Commonwealth. Unallocated moneys in the Fund in any year shall remain in the Fund and be available for allocation for grants under this article in ensuing fiscal years.

§ 56-602. Alternative compliance payment.

A. At the end of each program year, the program administrator shall provide a report to the Commission and to each covered supplier showing their status level of renewable energy acquisition.

B. The Commission shall conduct a review of each determination made under § 56-598. If, after notice and hearing, the Commission determines that a supplier has failed to comply with § 56-598, the Commission shall order the supplier to make an alternative compliance payment.

C. Subject to the provisions of subsection D, the alternative compliance payment to be paid:

1. For failing to comply with the requirements of subdivision B 1 of § 56-598 regarding the purchase of electric energy generated from Category 1 energy sources shall be $0.30 for every kilowatt hour of electricity less than the required amount;

2. For failing to comply with the requirements of subdivision B 2 of § 56-598 regarding the purchase of electric energy generated from Category 2 energy sources shall be $0.02 for every kilowatt hour of electricity less than the required amount;

3. For failing to comply with the requirements of subdivision B 3 of § 56-598 regarding the purchase of electric energy generated from Category 3 energy sources shall be $0.01 for every kilowatt hour of electricity less than the required amount; and

4. For failing to comply with the requirements of subdivision B 4 of § 56-598 regarding the purchase of electric energy generated from the Category 4 energy source shall be $0.01 for every kilowatt hour of electricity less than the required amount.

D. Notwithstanding the provisions of subsection C, in determining the liability of a supplier for an alternative compliance payment, the Commission shall:

1. Count any excess energy generated from Category 1 energy sources toward the requirements of subdivisions B 2 or B 3 of § 56-598 regarding the purchase of electric energy generated from Category 2 or Category 3 energy sources;

2. Not count any energy generated from Category 3 energy sources in excess of the 3% maximum required toward the requirements of subdivisions B 1 or B 2 of § 56-598 regarding the purchase of electric energy generated from Category 1 or Category 2energy sources; and

3. Count any excess energy generated from Category 2 energy sources toward the requirement that 15% of the electric energy purchased in 2015 and thereafter be from renewable energy sources, less the amount required to be generated from Category 3 energy sources up to its cap of 3% in 2015.

E. Alternative compliance payments imposed pursuant to this section shall be paid into the Virginia Sustainable Energy Fund created pursuant to § 56-601.

F. The Commission shall establish a process to provide for, at least annually, a review of the renewable energy credit market within the Commonwealth and the service territories of the regional transmission organizations that manage the transmission system in any part of this Commonwealth. The Commission shall use the results of this study to identify any changes to the alternative compliance payment program amounts needed to induce suppliers to self-generate or purchase renewable energy credits rather than submit alternative compliance payments. If the Commission finds that the alternative compliance payment program needs to be changed to have the intended effect, the Commission shall present these findings to the General Assembly with a recommendation for legislative enactment.

§ 56-603. Portfolio requirements in other states.

If a supplier sells electricity in any other state and is subject to renewable energy portfolio requirements in that state, it shall list any such requirement and shall indicate how it satisfied those renewable energy portfolio requirements in its annual report to the Commission demonstrating compliance with this chapter. To prevent double-counting, suppliers shall not satisfy Virginia's renewable energy portfolio requirements using renewable energy or renewable energy credits used to

satisfy another state's portfolio requirements. Renewable energy credits derived only from renewable energy sources inside the geographical boundaries of this Commonwealth or within the service territory of any regional transmission organization that manages the transmission system in any part of the Commonwealth shall be eligible to meet the compliance requirements under this act. Suppliers shall document that this energy was not used to satisfy another state's renewable energy portfolio standards.

§ 56-604. Interagency responsibilities.

A. The Commission will carry out the responsibilities delineated within this chapter. The Commission also shall, in cooperation with the Department, conduct an ongoing renewable energy resources planning assessment for this Commonwealth. This assessment shall, at a minimum, identify current and operating qualifying renewable energy facilities, the potential to add future qualifying renewable energy generating capacity, including the potential for air or water permitting or other regulatory approval processes to affect the construction or operation, or both, of qualifying renewable energy facilities within the Commonwealth, or the availability of renewable energy credits generated by qualifying renewable energy facilities located within the Commonwealth, and the conditions of the renewable energy credits marketplace. The assessment shall identify whether and how to maintain or increase the competitiveness of the renewable energy credits market within the Commonwealth.

B. The Department shall ensure that all qualified renewable energy sources meet all applicable environmental standards and shall verify that a renewable energy source meets the standards set forth in § 56-598.

C. The Commission and the Department shall work cooperatively to monitor the performance of all aspects of this chapter and will provide an annual report to the chairmen of the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Commerce and Labor, the House Committee on Agriculture, Chesapeake and Natural Resources, and the House Committee on Commerce and Labor. The report shall include at a minimum:

1. The status of compliance with the provisions of this act by suppliers;

2. Current costs of renewable energy credits on a per kilowatt hour basis for all renewable energy technology types;

3. Costs associated with the renewable energy credits program under this chapter, including the number and amount of alternative compliance payments;

4. The status of the renewable energy credits marketplace within the Commonwealth; and

5. Recommendations for program improvements.

§ 56-605. Cooperatives.

Each cooperative operating within the Commonwealth shall offer to its retail customers a voluntary program of energy efficiency programs, as a means to comply with the requirements of this chapter.

§ 56-606. Unavailability of renewable energy resources.

Upon its own initiative or upon a request of a supplier, the Commission, within 60 days, shall determine if renewable energy credits are reasonably available in the marketplace in sufficient quantities for the suppliers to meet their obligations for that reporting year under this chapter. If the Commission determines that renewable energy credits are not reasonably available in sufficient quantities in the marketplace for a supplier to meet its obligations under this chapter, then the Commission shall modify the underlying obligation of the supplier or recommend to the General Assembly that the underlying obligation be eliminated.

§ 56-607. Compliance review; report to General Assembly.

Upon commencement of reporting year 2012/2013, the Commission shall undertake a review of compliance by suppliers with the requirements of this chapter. The review shall include the status of renewable energy technologies within this Commonwealth and the capacity to add additional renewable energy resources. The Commission shall use the results of this review to recommend to the General Assembly additional compliance goals beyond reporting year 2015/2016. The Commission shall work with the Department in evaluating the future renewable energy resource potential.

2. That the provision of this act adding § 56-598 to the Code of Virginia shall not be severable from the other provisions of this act, and that if such any provision of such section is held to be invalid, the remaining provisions of this act shall be void.