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HOUSE BILL NO. 3029

Offered January 11, 2007

A BILL to amend and reenact § 15.2-2404 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-2404.1, relating to the creation of a corporation to receive distributions of stock in electric utilities when transmission lines are installed underground.

Patrons—Marshall, R.G., Cole and McQuigg

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-2404 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-2404.1 as follows:

§ 15.2-2404. Authority to impose taxes or assessments for local improvements; purposes.

A. A locality may impose taxes or assessments upon the owners of abutting property for constructing, improving, replacing or enlarging the sidewalks upon existing streets, for improving and paving existing alleys, and for the construction or the use of sanitary or storm water management facilities, retaining walls, curbs and gutters. Such taxes or assessments may include the legal, financial or other directly attributable costs incurred by the locality in creating a district, if a district is created, and financing the payment of the improvements. The taxes or assessments shall not be in excess of the peculiar benefits resulting from the improvements to such abutting property owners. No tax or assessment for retaining walls shall be imposed upon any property owner who does not agree to such tax or assessment.

B. In addition to the foregoing, a locality may impose taxes or assessments upon the owners of abutting property for the construction, replacement or enlargement of waterlines; for the installation of street lights; for the construction or installation of canopies or other weather protective devices; for the installation of lighting in connection with the foregoing; and for permanent amenities, including, but not limited to, benches or waste receptacles. With regard to installation of street lights, a locality may provide by ordinance that upon a petition of at least 60 percent of the property owners within a subdivision, or such higher percent as provided in the ordinance, the locality may impose taxes or assessments upon all owners within the subdivision who benefit from such improvements. The taxes or assessments shall not be in excess of the peculiar benefits resulting from the improvements to such property owners.

C. In cities with a population (i) in excess of 170,000 according to the 1970 or any subsequent census or (ii) between 22,000 and 23,500, the governing body may impose taxes or assessments upon the abutting property owners for the initial improving and paving of an existing street provided not less than 50 percent of such abutting property owners who own not less than 50 percent of the property abutting such street request the improvement or paving. The taxes or assessments permitted by this paragraph shall not be in excess of the peculiar benefits resulting from the improvements to such abutting property owners and in no event shall such amount exceed the sum of \$10 per front foot of property abutting such street or the sum of \$1,000 for any one subdivided lot or parcel abutting such street, whichever is the lesser.

D. The governing bodies of the Cities of Buena Vista and Waynesboro and the County of Augusta may, by duly adopted ordinance, impose taxes or assessments upon abutting property owners subjected to frequent flooding for special benefits conferred upon that property by the installation or construction of flood control barriers, equipment or other improvements for the prevention of flooding in such area and shall provide for the payment of all or any part of the above projects out of the proceeds of such taxes or assessments, provided that such taxes or assessments shall not be in excess of the peculiar benefits resulting from the improvements to such abutting property owners.

E. In the Cities of Poquoson and Williamsburg, the governing body may impose taxes or assessments upon the owners of abutting property for the underground relocation of distribution lines for electricity, telephone, cable television and similar utilities. Notwithstanding the provisions of § 15.2-2405, such underground relocation of distribution lines may only be ordered by the governing body and the cost thereof apportioned in pursuance of an agreement between the governing body and the abutting landowners. Notice shall be given to the abutting landowners, notifying them when and where they may appear before the governing body, or some committee thereof, or the administrative board or other similar board of the locality to whom the matter may be referred, to be heard in favor of or against such improvements.

F. In Loudoun County and the Towns of Hamilton, Leesburg, and Purcellville, the governing body may request an electric utility that proposes to construct an overhead electric transmission line of 150

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59 kilovolts or more, any portion of which would be located in such locality, to enter into an agreement
60 with the locality that provides (i) the locality will impose a tax or assessment on electric utility
61 customers in a special rate district in an amount sufficient to cover the utility's additional costs of
62 constructing, operating, and maintaining that portion of the proposed line to be located in such locality,
63 or any smaller portion thereof as the utility and the locality may agree, as an underground rather than an
64 overhead line; (ii) the tax or assessment will be shown as a separate item on such customers' electric
65 bills and will be collected by the utility on behalf of the locality; (iii) the utility will construct, operate,
66 and maintain the agreed portion of the line underground; (iv) the locality will pay to the utility its full
67 additional costs of constructing, operating, and maintaining that portion of the line underground rather
68 than overhead; 2404.1 and (v) such other terms and conditions as the parties may agree. This provision
69 shall not apply, however, to lines in operation as of March 1, 2005, or to non-operational lines for
70 which the utility has acquired any right-of-way by that date.

71 If the locality and the utility enter into such an agreement, the locality shall by ordinance (i) set the
72 boundaries of the special rate district within a reasonable distance of the route of that portion of the line
73 to be placed underground pursuant to the agreement, and (ii) fix the amount of such tax or assessment,
74 which shall be based on the assessed value of real property within such district. Thereafter, owners of
75 real property comprising not less than 60 percent of the assessed value of real property within such
76 district may petition the locality to impose such tax or assessment. If such petition is filed, the locality
77 shall submit the agreement to the State Corporation Commission, which, after notice and opportunity for
78 hearing, shall approve the agreement if it finds it to be in the public interest. If the agreement is
79 approved by the State Corporation Commission, the locality shall impose such tax or assessment on
80 electric utility customers within the district, and the locality and the utility shall carry out the agreement
81 according to its terms and conditions.

82 *G. The governing body of any locality within or located adjacent to the Eighth Planning District may*
83 *request that an electric utility proposing to construct an overhead electric transmission line of 450*
84 *kilovolts or more, any portion of which would be located in such locality, construct, operate, and*
85 *maintain the line underground rather than overhead at the expense of the electric utility. If the electric*
86 *utility declines to do so, the electric utility, upon request from the locality, shall enter into an agreement*
87 *with the locality that provides that (i) the locality will impose a tax or assessment on electric utility*
88 *customers in a special rate district in an amount sufficient to cover the utility's additional costs of*
89 *constructing, operating, and maintaining that portion of the proposed line to be located in such locality,*
90 *or any smaller portion thereof as the utility and the locality may agree, as an underground rather than*
91 *an overhead line; (ii) the tax or assessment will be shown as a separate item on such customers' electric*
92 *bills and will be collected by the utility on behalf of the locality; (iii) the utility will construct, operate,*
93 *and maintain the agreed-upon portion of the line underground; (iv) the locality will pay to the utility its*
94 *full additional costs of constructing, operating, and maintaining that portion of the line underground*
95 *rather than overhead; (v) the electric utility will distribute to a corporation created by the locality*
96 *certain of its capital stock, as provided in § 15.2-2404.1, with a fair market value that equals the*
97 *amount required to cover the utility's additional costs of constructing, operating, and maintaining the*
98 *line underground as determined in clause (i); and (vi) such other terms and conditions as the parties*
99 *may agree.*

100 If the locality and the utility enter into such an agreement, the locality shall by ordinance (i) set the
101 boundaries of the special rate district within a reasonable distance of the route of that portion of the
102 line to be placed underground pursuant to the agreement, and (ii) fix the amount of such tax or
103 assessment, which shall be based on the assessed value of real property within such district. The locality
104 shall impose such tax or assessment on electric utility customers within the district, and the locality and
105 the utility shall carry out the agreement according to its terms and conditions.

106 *§ 15.2-2404.1. Creation of corporation to own shares of electric utility.*

107 *A. If the governing body of any locality within or located adjacent to the Eighth Planning District*
108 *enters into an agreement pursuant to subsection G of § 15.2-2404, whereby the locality imposes a tax or*
109 *assessment on electric utility customers in a special rate district to cover the utility's additional costs of*
110 *constructing, operating, and maintaining that portion of the proposed line as an underground rather*
111 *than an overhead line, then, notwithstanding any conflicting provision of law to the contrary:*

112 *1. The governing body of any locality is authorized to create a for-profit stock corporation as*
113 *provided in the Virginia Stock Corporation Act (§ 13.1-601 et seq.), which corporation shall have as its*
114 *shareholders the owners of real estate within the special rate district established pursuant to subsection*
115 *G of § 15.2-2404. The shares of the corporation shall be allocated among such owners of property in*
116 *the special rate district as the governing body of the locality shall determine, based on a formula that*
117 *allocates to each property owner a fraction of the total number of shares equal to the ratio that the*
118 *amount of the tax or assessment payable by each owner bears to the total of the tax or assessment*
119 *payable by all owners;*

120 *2. The corporation shall be created for the sole purpose of owning an interest in the electric utility*

as provided in this section;

3. Upon completion of the construction of the line and the start of the levying of the tax or assessment as provided pursuant to subsection G of § 15.2-2404, the electric utility shall distribute to the corporation shares of capital stock in the electric utility, with the same voting rights, rights to receive dividends, and other rights applicable to its common stock generally, with a fair market value as of the date of the distribution equal to the amount required to cover the utility's additional costs of constructing, operating, and maintaining that portion of the proposed line as an underground rather than an overhead line. Such distribution of stock shall be subject to review by the Commission, which, after notice and opportunity for hearing, shall approve the distribution if it finds such distribution to be consistent with the terms of this section.

B. Payments received by the corporation as a result of its ownership of stock in the electric utility may be used to reimburse the locality for its payments to the utility for the additional costs of constructing, operating, and maintaining the line underground rather than overhead, to compensate owners of property for any uncompensated diminution in the fair market value to the property as a result of the construction, operation, or maintenance of the underground line, or for such other purpose as the board of directors of the corporation shall determine.