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## SENATE BILL NO. 1362

Offered January 17, 2007

A *BILL to amend and reenact §§ 56-46.1 and 56-265.2 of the Code of Virginia, relating to construction of electrical utility facilities; review of applications by State Corporation Commission.*

Patron—Colgan

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:****1. That §§ 56-46.1 and 56-265.2 of the Code of Virginia are 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 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (i) shall consider the effect of the proposed facility on economic development within the Commonwealth and (ii) shall consider any improvements in service reliability that may result from the construction of such facility.

B. No overhead electrical transmission line of 150 kilovolts or more shall be constructed unless the State Corporation Commission shall, after at least thirty days' advance notice by (i) publication in a newspaper or newspapers of general circulation in the counties and municipalities through which the line is proposed to be built, (ii) written notice to the governing body of each such county and municipality, and (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality, approve such line. Such approval shall not be required for transmission lines constructed prior to January 1, 1983, for which the Commission has issued a certificate of convenience and necessity. Such notices shall include a written description of the proposed route the line is to follow, as well as a map or sketch of the route. As a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow *and the method of installation* will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned and, in the case of any application which is filed with the Commission in the years 1991 and 1992, for approval of a line of 500 kilovolts or more, any portion of which is proposed for construction west of the Blue Ridge Mountains, that the applicant will reasonably accommodate requests to wheel or transmit power from new electric generation facilities constructed after January 9, 1991. *In making the determinations about need, corridor or route, and method of installation, the Commission shall independently verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation.*

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59 *As a condition of approval, the Commission shall also consider the economic effect of an electric facility*  
60 *on the value of land and structures adjacent to the proposed location or corridor, the cost of energy*  
61 *lost during the transmission of electricity, the potential for increased use of wetland mitigation credits,*  
62 *any environmental impacts regarding the generation of noxious compounds such as ozone or nitric*  
63 *oxide, and potential electromagnetic interference.*

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

68 If, prior to such approval, written requests therefor are received from twenty or more interested  
69 parties, the Commission shall hold at least one hearing in the area which would be affected by  
70 construction of the line, for the purpose of receiving public comment on the proposal. If any hearing is  
71 to be held in the area affected, the Commission shall direct that a copy of the transcripts of any  
72 previous hearings held in the case be made available for public inspection at a convenient location in the  
73 area for a reasonable time before such local hearing.

74 D. For purposes of this section, "interested parties" shall include the governing bodies of any  
75 counties or municipalities through which the line is proposed to be built, and persons residing or owning  
76 property in each such county or municipality and "environment" or "environmental" shall be deemed to  
77 include in meaning "historic," as well as a consideration of the probable effects of the line on the health  
78 and safety of the persons in the area concerned.

79 For purposes of this section, "qualifying facilities" means a cogeneration or small power production  
80 facility which meets the criteria of 18 C.F.R. Part 292; "public utility" means a public utility as defined  
81 in § 56-265.1; and "reasonably accommodate requests to wheel or transmit power" means:

82 1. That the applicant will make available to new electric generation facilities constructed after  
83 January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total  
84 megawatts of the additional transmission capacity created by the proposed line, for the purpose of  
85 wheeling to public utility purchasers the power generated by such qualifying facilities and other  
86 nonutility facilities which are awarded a power purchase contract by a public utility purchaser in  
87 compliance with applicable state law or regulations governing bidding or capacity acquisition programs  
88 for the purchase of electric capacity from nonutility sources, provided that the obligation of the applicant  
89 will extend only to those requests for wheeling service made within the twelve months following  
90 certification by the State Corporation Commission of the transmission line and with effective dates for  
91 commencement of such service within the twelve months following completion of the transmission line.

92 2. That the wheeling service offered by the applicant, pursuant to subdivision D 1 of this section,  
93 will reasonably further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L.  
94 95-617), as demonstrated by submitting to the Commission, with its application for approval of the line,  
95 the cost methodologies, terms, conditions, and dispatch and interconnection requirements the applicant  
96 intends, subject to any applicable requirements of the Federal Energy Regulatory Commission, to include  
97 in its agreements for such wheeling service.

98 E. In the event that, at any time after the giving of the notice required in subsection B of this  
99 section, it appears to the Commission that consideration of a route or routes significantly different from  
100 the route described in the notice is desirable, the Commission shall cause notice of the new route or  
101 routes to be published and mailed in accordance with subsection B of this section. The Commission  
102 shall thereafter comply with the provisions of this section with respect to the new route or routes to the  
103 full extent necessary to give interested parties in the newly affected areas the same protection afforded  
104 interested parties affected by the route described in the original notice.

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

107 G. The Commission shall enter into a memorandum of agreement with the Department of  
108 Environmental Quality regarding the coordination of their reviews of the environmental impact of  
109 electric generating plants and associated facilities.

110 § 56-265.2. Certificate of convenience and necessity required for acquisition, etc., of new facilities.

111 A. It shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise,  
112 any facilities for use in public utility service, except ordinary extensions or improvements in the usual  
113 course of business, without first having obtained a certificate from the Commission that the public  
114 convenience and necessity require the exercise of such right or privilege. Any certificate required by this  
115 section shall be issued by the Commission only after opportunity for a hearing and after due notice to  
116 interested parties. The certificate for overhead electrical transmission lines of 150 kilovolts or more shall  
117 be issued by the Commission only after compliance with the provisions of § 56-46.1.

118 B. In exercising its authority under this section, the Commission, notwithstanding the provisions of  
119 § 56-265.4, may permit the construction and operation of electrical generating facilities, which shall not  
120 be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10

(§ 56-232 et seq.) of this title, upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth; (ii) will have no material adverse effect upon reliability of electric service provided by any such regulated public utility; and (iii) are not otherwise contrary to the public interest. In review of its petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1. Facilities authorized by a certificate issued pursuant to this subsection may be exempted by the Commission from the provisions of Chapter 10 (§ 56-232 et seq.) of Title 56.

C. A *digital geographic information system (GIS)* map showing the location of any proposed ordinary extension or improvement outside of the territory in which the public utility is lawfully authorized to operate shall be filed with the Commission, and prior notice of such ordinary extension shall be given to the public utility or other entity authorized to provide the same utility service within said territory. Ordinary extensions outside the service territory of a public utility shall be undertaken only for use in providing its public utility service and shall be constructed and operated so as not to interfere with the service or facilities of any public utility or other entity authorized to provide utility service within any other territory. If, upon objection of the affected utility or entity filed within thirty days of the aforesaid notice and after investigation and opportunity for a hearing the Commission finds an ordinary extension would not comply with this section, it may alter or amend the plan for such activity or prohibit its construction. *The Commission shall make GIS maps provided under this subsection available to the public on the Commission's website.*

D. Whenever a certificate is required under this section for a pipeline for the transmission or distribution of natural or manufactured gas, the Commission may issue such a certificate only after compliance with the provisions of § 56-265.2:1. As used in this section and § 56-265.2:1, "pipeline for the transmission or distribution of manufactured or natural gas" shall include the pipeline and any related facilities incidental or necessary to the operation of the pipeline.

E. This section shall be subject to the requirements of § 56-265.3, if any, and nothing herein shall be construed to supersede § 56-265.3.

**2. That the amendments to subsection B of §56-46.1 requiring an independent analysis of the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation shall apply to any applications for the construction of new utility facilities pending before the State Corporation Commission on the effective date of this act.**

**3. That the Joint Commission on Technology and Science convene a working group to develop recommendations for the necessary factors to be considered by the State Corporation Commission in reviewing applications for the construction of an electrical utility facility. In accordance with Article IX, Section 2 of the Constitution of Virginia, such recommendations shall ensure that the interests of the all consumers of the Commonwealth are represented in the review, and shall identify all direct and indirect costs to be considered. The workgroup shall be comprised of six legislative members as follows: four members of the House of Delegates to be appointed by the Speaker of the House, one of whom shall be a member of the Joint Legislative Audit and Review Commission; and two members of the Senate of Virginia to be appointed by the Senate Committee on Rules. The workgroup shall also be comprised of eleven citizen members to be appointed by the Chairman of the Joint Commission on Technology and Science as follows: four representatives of electric utility companies, including at least one municipal corporation; three citizen members; a representative of the Virginia Manufacturers Association; a representative of the Virginia Realtors Association; and two representatives with an expertise in preservation and conservation. The Chairman of the Joint Commission on Technology and Science shall have the discretion to appoint up to four additional members. Any recommendations of the Joint Commission on Technology and Science shall require approval of the General Assembly before implementation by the State Corporation Commission.**