

2008 SESSION

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HB1140

089821620

HOUSE BILL NO. 1140

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 56-542, 58.1-2600, 58.1-2606 and 58.1-2607 of the Code of Virginia, relating to providing for the assessment of property of roadway operators under the Virginia Highway Corporation Act by the State Corporation Commission and establishing the rate of taxation of such property.

Patron—May

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-542, 58.1-2600, 58.1-2606, and 58.1-2607 of the Code of Virginia are amended and reenacted as follows:

§ 56-542. Powers of the Commission.

A. The Commission shall have the power to regulate the operator under this title as a public service corporation. The Commission shall also have the power, and be charged with the duties of reviewing and approving or denying the application, of supervising and controlling the operator in the performance of its duties under this chapter and title, and of correcting any abuse in the performance of the operator's public duties. *The Commission shall also have the power pursuant to Article X, Section 2 of the Constitution of Virginia and to Chapter 26 of Title 58.1 to assess all of the real and personal property of the operator.* Pursuant to § 56-36, the Commission shall require from the operator a verified report describing the nature of its contractual and other relationships with individuals or entities contracting with the operator for the provision of significant financial, construction, or maintenance services. The Commission shall review the report and such other materials as it shall deem necessary for the purpose of determining improper or excessive costs, and shall exclude from the operator's costs any amounts which it finds are improper or excessive. The Commission also shall have the duty and authority to approve or revise the toll rates charged by the operator. ~~Initial rates shall be approved if they appear~~ *Effective January 1, 2013, and notwithstanding any other provision of law, upon application of the operator filed not more often than once within any 12 month period, the Commission shall approve within 45 days any request to increase approved tolls by a percentage that is no greater than the increase in the CPI (as defined herein) from the date the Commission last approved a toll increase plus one percent. A request by the operator for an increase in approved tolls by a greater percentage shall be approved by the Commission only upon a finding that (i) a toll increase equal to the CPI plus one percent will not be sufficient to permit the operator to maintain the minimum coverage ratio set forth in the rate covenant provisions of its bond indenture or similar credit agreement, and (ii) such greater proposed tolls appear to be reasonable to the user in relation to the benefit obtained, not likely to materially discourage use of the roadway and provide the operator no more than a reasonable rate of return as determined by the Commission. In the event of a change in the ownership of the operator that was accompanied by the issuance of securities, as defined in § 56-57A and § 56-65.1, the Commission shall in determining the reasonable return to be provided to the operator assure that such change of ownership and the accompanying issuance of securities does not cause an increase in tolls. As used in this § 56-542, "CPI" means the "Consumer Price Index - U.S. City Averages for All Urban Consumers, All Items" (not seasonally adjusted) of the U.S. Department of Labor, Bureau of Labor Statistics; provided, however, that if the CPI is modified such that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics and if the CPI is discontinued or revised, such other historical index or computation approved by the Commission shall be used for purposes of this § 56-542 that would obtain substantially the same result as would have been obtained if the CPI had not been discontinued or revised. Thereafter, the Commission, upon application, complaint or its own initiative, and after investigation, may order substituted for any toll being charged by the operator, a toll which is set at a level which is reasonable to the user in relation to the benefit obtained and which will not materially discourage use of the roadway by the public and which will provide the operator no more than a reasonable return as determined by the Commission.* The Commission may charge a reasonable annual fee to cover the costs of supervision and controlling the operator in the performance of its duties under this chapter and pursuant to this section.

B. Pursuant to § 56-36, the Commission shall require from an operator a verified copy of the operator's annual audited financial statements, which includes a statement of the operator's ownership.

59 *The operator shall file such statement within four months from the end of the operator's fiscal year.*

60 § 58.1-2600. Definitions.

61 A. As used in this chapter:

62 "Certificated motor vehicle carrier" means a common carrier by motor vehicle, as defined in
63 § 46.2-2000, operating over regular routes under a certificate of public convenience and necessity issued
64 by the Commission or issued on or after July 1, 1995, by the Department of Motor Vehicles. A transit
65 company or bus company that is owned or operated directly or indirectly by a political subdivision of
66 this Commonwealth shall not be deemed a "certificated motor vehicle carrier" for the purposes of this
67 chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, nor shall such
68 transit company or bus company thereby be subject to the imposition of local property levies. A
69 common carrier of property by motor vehicle shall not be deemed a "certificated motor vehicle carrier"
70 for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in
71 § 58.1-2652, but shall be subject to the imposition of local property taxes.

72 "Cogenerator" means a qualifying cogenerator or qualifying small power producer within the meaning
73 of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public
74 Utility Regulatory Policies Act of 1978 (P.L. 95-617).

75 "Commission" means the State Corporation Commission which is hereby designated pursuant to
76 Article X, Section 2 of the Constitution of Virginia as the central state agency responsible for the
77 assessment of the real and personal property of all public service corporations, except those public
78 service corporations for which the Department of Taxation is so designated, upon which the
79 Commonwealth levies a license tax measured by the gross receipts of such corporations. The State
80 Corporation Commission shall also assess the property of each telephone or telegraph company, every
81 public service corporation in the Commonwealth in the business of furnishing heat, light and power by
82 means of electricity, and each electric supplier, as provided by this chapter.

83 "Department" means the Department of Taxation which is hereby designated pursuant to Article X,
84 Section 2 of the Constitution of Virginia as the central state agency to assess the real and personal
85 property of railroads and pipeline transmission companies as defined herein.

86 "Electric supplier" means any person owning or operating facilities for the generation, transmission or
87 distribution of electricity for sales, except any person owning or operating facilities with a designed
88 generation capacity of twenty-five megawatts or less.

89 "Estimated tax" means the amount of tax which a taxpayer estimates as being imposed by Article 2
90 (§ 58.1-2620 et seq.) of this chapter for the tax year as measured by the gross receipts received in the
91 taxable year.

92 "Freight car company" includes every car trust, mercantile or other company or person not domiciled
93 in this Commonwealth owning stock cars, furniture cars, fruit cars, tank cars or other similar cars. Such
94 term shall not include a company operating a line as a railroad.

95 "Gross receipts" means the total of all revenue derived in the Commonwealth, including but not
96 limited to income from the provision or performance of a service or the performance of incidental
97 operations not necessarily associated with the particular service performed, without deductions for
98 expenses or other adjustments. Such term shall not, however, include interest, dividends, investment
99 income or receipts from the sale of real property or other assets except inventory of goods held for sale
100 or resale.

101 "Pipeline distribution company" means a corporation, other than a pipeline transmission company,
102 which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the
103 products or by-products thereof to a purchaser for purposes of furnishing heat or light.

104 "Pipeline transmission company" means a corporation authorized to transmit natural gas,
105 manufactured gas or crude petroleum and the products or by-products thereof in the public service by
106 means of a pipeline or pipelines from one point to another when such gas or petroleum is not for sale to
107 an ultimate consumer for purposes of furnishing heat or light.

108 "*Roadway Operator*" means a person or entity to which the Commission has issued a certificate of
109 authority to construct, operate or enlarge a roadway, and which, after issuance of a certificate of
110 authority, is responsible for the operation of any roadway under the provisions of the Virginia Highway
111 Corporation Act (§ 56.525 et seq.).

112 "*Roadway Property*" means all real property and tangible personal property owned or leased and
113 used by the Roadway Operator in the operation of the roadway, including both the land on which the
114 roadway is operated and all land adjacent thereto and used for current operations or held for future
115 operations, and all improvements on such land.

116 "Tax Commissioner" means the chief executive officer of the Department of Taxation or his
117 designee.

118 "Tax year" means the twelve-month period beginning on January 1 and ending on December 31 of
119 the same calendar year, such year also being the tax assessment year or the year in which the tax levied
120 under this chapter shall be paid.

121 "Taxable year" means the calendar year preceding the tax year, upon which the gross receipts are
122 computed as a basis for the payment of the tax levied pursuant to this chapter.

123 "Telegraph company" means a corporation or person operating the apparatus necessary to
124 communicate by telegraph.

125 "Telephone company" means a person holding a certificate of convenience and necessity granted by
126 the State Corporation Commission authorizing telephone service; or a person authorized by the Federal
127 Communications Commission to provide commercial mobile service as defined in § 332(d) (1) of the
128 Communications Act of 1934, as amended, where such service includes cellular mobile radio
129 communications services or broadband personal communications services; or a person holding a
130 certificate issued pursuant to § 214 of the Communications Act of 1934, as amended, authorizing
131 domestic telephone service and belonging to an affiliated group including a person holding a certificate
132 of convenience and necessity granted by the State Corporation Commission authorizing telephone
133 service. The term "affiliated group" has the meaning given in § 58.1-3700.1.

134 B. For purposes of this chapter the terms "license tax" and "franchise tax" shall be synonymous.

135 § 58.1-2606. Local taxation of real and tangible personal property of public service corporations;
136 other persons.

137 A. Notwithstanding the provisions of this section and §§ 58.1-2607 and 58.1-2690, all local taxes on
138 the real estate and tangible personal property of public service corporations referred to in such sections
139 and other persons with property assessed pursuant to this chapter shall be at the real estate rate
140 applicable in the respective locality.

141 B. Notwithstanding any of the foregoing provisions, all aircraft, automobiles and trucks of such
142 corporations and other persons shall be taxed at the same rate or rates applicable to other aircraft,
143 automobiles and trucks in the respective locality.

144 C. Notwithstanding any of the foregoing provisions, generating equipment that is reported to the
145 Commission by electric suppliers shall be taxed at a rate determined by the locality but shall not exceed
146 the real estate rate applicable in the respective localities. However, generating equipment that is reported
147 to the Commission by electric suppliers utilizing wind turbines may be taxed by the locality at a rate
148 that exceeds the real estate rate, but that does not exceed the general class of personal property tax rate
149 applicable in the respective localities.

150 D. (1) *Roadway Property shall be listed and is hereby segregated as a class of property separate
151 from all other classes of property and shall be subject to local taxation only.*

152 (2) *Notwithstanding any of the foregoing provisions, Roadway Property shall be taxed at a rate
153 determined by the locality but shall not exceed the lesser of the real estate rate generally applicable in
154 the locality and the Roadway Property Rate.*

155 (3) *The Roadway Property Rate shall be equal to the rate that, when applied to the assessed value of
156 Roadway Property in the locality as of the tax date, adjusted as hereafter provided, shall produce the
157 same revenue from assessments of such property by that locality as in the preceding year increased or
158 decreased, as the case may be, by a factor equal to the change in the CPI for the preceding calendar
159 year plus one percent. For such purposes, the assessed value of Roadway Property shall be reduced by
160 the amount by which the assessed value of Roadway Property placed in service after the tax date of the
161 previous year exceeds the assessed value, as of the tax date of the previous year, of Roadway Property
162 removed from service after such date. The calculations required by this paragraph shall be made based
163 on the value of assessments as reflected in final tax bills sent to taxpayers, without adjustment for
164 changes occurring after the close of the taxable year.*

165 (4) *As used in this § 58.1-2606, "CPI" means the "Consumer Price Index - U.S. City Averages for
166 All Urban Consumers, All Items" (not seasonally adjusted) of the U.S. Department of Labor, Bureau of
167 Labor Statistics; provided, however, that if the CPI is modified such that the base year of the CPI
168 changes, the CPI shall be converted in accordance with the conversion factor published by the U.S.
169 Department of Labor, Bureau of Labor Statistics and if the CPI is discontinued or revised, such other
170 historical index or computation approved by the Commission shall be used for purposes of this
171 § 58.1-2606 that would obtain substantially the same result as would have been obtained if the CPI had
172 not been discontinued or revised.*

173 § 58.1-2607. Local taxation of Roadway Property and real and tangible personal property of railroads.

174 A. Notwithstanding the provisions of §§ 58.1-2604 and 58.1-2606, and beginning with assessments
175 initially effective January 1, 1980, all assessments of *Roadway Property* and real estate and tangible
176 personal property of railroads shall be made by application of the local assessment ratio prevailing in
177 such taxing district for other real estate as determined or published by the Department, except that land
178 and noncarrier property shall be assessed as provided in § 58.1-2609.

179 B. The real estate and tangible personal property (other than the rolling stock) of every railway
180 company, but not its franchise, shall be assessed on the valuation fixed by the Department and shall be
181 taxed by a county, city, town, and magisterial district at the real estate tax rate applicable in such

182 respective locality.