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## HOUSE BILL NO. 1443

Offered January 15, 2008

A *BILL to amend and reenact § 56-46.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 10.1-1308.1, relating to the permitting process for alternative and renewable energy facilities.*

Patrons—Merricks, Hogan, Marshall, D.W., O'Bannon and Vanderhye

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That § 56-46.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 10.1-1308.1 as follows:**

*§ 10.1-1308.1. Streamlined permitting process for qualified energy generators.*

*A. As used in this section:*

*"Biomass" means organic material that is available on a renewable or recurring basis, including:*

*1. Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;*

*2. Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey, and lactose;*

*3. Animal waste, including manure and slaughterhouse and other processing waste;*

*4. Solid woody waste materials, including landscape trimmings, waste pallets, crates and manufacturing, construction, and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;*

*5. Crops and trees planted for the purpose of being used to produce energy;*

*6. Landfill gas, wastewater treatment gas, and biosolids, including organic waste byproducts generated during the wastewater treatment process; and*

*7. Municipal solid waste, excluding tires and medical and hazardous waste.*

*"Expedited process" means a process that (i) requires the applicant to pay fees to the Commonwealth in connection with the issuance and processing of the permit application that do not exceed \$50 and (ii) has a duration, from receipt of a complete permit application until final action by the Board or Department on the application, not longer than 60 days.*

*"Qualified energy generator" means a commercial facility located in the Commonwealth with the capacity annually to generate at least one megawatt of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product, that is generated or produced from solar photovoltaic technology, wind power, or biomass, and that is sold to an unrelated person or used in a manufacturing process.*

*B. The Board, in conjunction with the State Corporation Commission and Secretary of Natural Resources and other affected state agencies and boards, shall develop an expedited process for issuing any permit that the Board is required to issue for the construction or operation of a qualified energy generator. The development of the expedited permitting process shall be in accordance with subdivision A 9 of § 2.2-4006.*

*§ 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*

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59 ability of the Commission to keep the record of a case open. Nothing in this section shall affect any  
60 right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed  
61 facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the  
62 one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a  
63 decision approving such proposed facility that is conditioned upon issuance of any environmental permit  
64 or approval. In every proceeding under this subsection, the Commission shall receive and give  
65 consideration to all reports that relate to the proposed facility by state agencies concerned with  
66 environmental protection; and if requested by any county or municipality in which the facility is  
67 proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3  
68 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (i) shall consider the  
69 effect of the proposed facility on economic development within the Commonwealth ~~and~~; (ii) shall  
70 consider any improvements in service reliability that may result from the construction of such facility;  
71 *and (iii) shall utilize the expedited review procedure established pursuant to subsection I in reviewing*  
72 *any application for approval of the construction of a qualified energy generator, as defined in*  
73 *§ 10.1-1308.1.*

74 B. No electrical transmission line of 138 kilovolts or more shall be constructed unless the State  
75 Corporation Commission shall, after at least thirty days' advance notice by (i) publication in a newspaper  
76 or newspapers of general circulation in the counties and municipalities through which the line is  
77 proposed to be built, (ii) written notice to the governing body of each such county and municipality, and  
78 (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route  
79 of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which  
80 requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in  
81 the land books maintained by the commissioner of revenue, director of finance or treasurer of the county  
82 or municipality, approve such line. Such notices shall include a written description of the proposed route  
83 the line is to follow, as well as a map or sketch of the route including a digital geographic information  
84 system (GIS) map provided by the public utility showing the location of the proposed route. The  
85 Commission shall make GIS maps provided under this subsection available to the public on the  
86 Commission's website. Such notices shall be in addition to the advance notice to the chief administrative  
87 officer of the county or municipality required pursuant to § 15.2-2202. As a condition to approval the  
88 Commission shall determine that the line is needed and that the corridor or route the line is to follow  
89 will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the  
90 area concerned. In making the determinations about need, corridor or route, and method of installation,  
91 the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability  
92 needs presented to justify the new line and its proposed method of installation. If the local  
93 comprehensive plan of an affected county or municipality designates corridors or routes for electric  
94 transmission lines and the line is proposed to be constructed outside such corridors or routes, in any  
95 hearing the county or municipality may provide adequate evidence that the existing planned corridors or  
96 routes designated in the plan can adequately serve the needs of the company. Additionally, the  
97 Commission shall consider, upon the request of the governing body of any county or municipality in  
98 which the line is proposed to be constructed, (i) the costs and economic benefits likely to result from  
99 requiring the underground placement of the line and (ii) any potential impediments to timely  
100 construction of the line.

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

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

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

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

119 1. That the applicant will make available to new electric generation facilities constructed after  
120 January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total

megawatts of the additional transmission capacity created by the proposed line, for the purpose of wheeling to public utility purchasers the power generated by such qualifying facilities and other nonutility facilities which are awarded a power purchase contract by a public utility purchaser in compliance with applicable state law or regulations governing bidding or capacity acquisition programs for the purchase of electric capacity from nonutility sources, provided that the obligation of the applicant will extend only to those requests for wheeling service made within the twelve months following certification by the State Corporation Commission of the transmission line and with effective dates for commencement of such service within the twelve months following completion of the transmission line.

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

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

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

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

H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from the Commission for any electric generating facility, electric transmission line, natural or manufactured gas transmission line as defined in 49 Code of Federal Regulations § 192.3, or natural or manufactured gas storage facility (hereafter, an energy facility) and (ii) an environmental permit for the energy facility that is subject to issuance by any agency or board within the Secretariat of Natural Resources, may request a pre-application planning and review process. In any such request to the Commission or the Secretariat of Natural Resources, the applicant shall identify the proposed energy facility for which it requests the pre-application planning and review process. The Commission, the Department of Environmental Quality, the Marine Resources Commission, the Department of Game and Inland Fisheries, the Department of Historic Resources, the Department of Conservation and Recreation, and other appropriate agencies of the Commonwealth shall participate in the pre-application planning and review process. Participation in such process shall not limit the authority otherwise provided by law to the Commission or other agencies or boards of the Commonwealth. The Commission and other participating agencies of the Commonwealth may invite federal and local governmental entities charged by law with responsibility for issuing permits or approvals to participate in the pre-application planning and review process. Through the pre-application planning and review process, the applicant, the Commission, and other agencies and boards shall identify the potential impacts and approvals that may be required and shall develop a plan that will provide for an efficient and coordinated review of the proposed energy facility. The plan shall include (a) a list of the permits or other approvals likely to be required based on the information available, (b) a specific plan and preliminary schedule for the different reviews, (c) a plan for coordinating those reviews and the related public comment process, and (d) designation of points of contact, either within each agency or for the Commonwealth as a whole, to facilitate this coordination. The plan shall be made readily available to the public and shall be maintained on a dedicated website to provide current information on the status of each component of the plan and each approval process including opportunities for public comment.

*I. The Commission shall establish procedures for the expedited review of applications for the construction of a qualified energy generator, as defined in § 10.1-1308.1, whenever the Commission's approval of the construction thereof is required under this title. Under the expedited review procedures, (i) any fees assessed by the Commission in connection with a proceeding under this section shall not exceed \$50 and (ii) the period from receipt of a complete permit application until final action by the Commission on the application shall not exceed 60 days.*