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HOUSE BILL NO. 2172

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 56-15, 56-17, and 56-259 of the Code of Virginia and to amend the Code of Virginia by adding in Title 67 a chapter numbered 11, consisting of sections numbered 67-1100 through 67-1111, relating to use of existing rights-of-way to connect renewable electricity generation facilities to transmission grid.

Patrons—Hogan, Athey, Cole, Lingamfelter, Merricks, Miller, J.H. and Poindexter

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-15, 56-17, and 56-259 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 67 a chapter numbered 11, consisting of sections numbered 67-1100 through 67-1111, as follows:

§ 56-15. Permits to place poles, wires, etc., in roads and streets in certain counties; charge therefor.

A. The governing body of Albemarle County, Chesterfield County, Henrico County, Prince William County, or York County, may adopt an ordinance requiring any person, firm or corporation to obtain a permit from the county engineer or such other officer as may be designated in such ordinance before placing any pole or subsurface structures under, along or in any county road or street in such county which is not included within the primary or secondary system of state highways, or any lines or wires that cross any such road or street, whether or not such road or street be actually opened, and may provide in such ordinance reasonable charges for the issuance of such a permit and penalties for violations of the terms of such ordinance to be imposed by the court, judge or justice trying the case.

B. In the event the county engineer or such other officer as may be designated fails or refuses to issue any such permit requested within thirty days after application therefor, or attaches to such permit conditions to which such person, firm or corporation is unwilling to consent, then such person, firm or corporation may proceed to make such crossing pursuant and subject to the provisions of §§ 56-23 to 56-32, as if the application had been made to the board of supervisors or other governing body of the county.

C. *The provisions of this section shall not apply with regard to the occupancy and use of any public parks, roads, works, turnpikes, streets, avenues, and alleys by a renewable generator that has acquired the authority to locate transmission facilities therein pursuant to Chapter 11 (§ 67-1100 et seq.) of Title 67.*

§ 56-17. Right of one public service corporation to cross the works of another; cost.

If any public service corporation deems it necessary in the construction of its works to cross the works of any other public service corporation, *or if any renewable generator as defined in § 67-1100 deems it necessary to cross the works of a public service corporation in the construction of transmission facilities that are required to connect a renewable energy facility to the transmission grid*, it may do so; provided such crossing shall be so located, constructed, and operated as not to impair, impede, or obstruct, in any material degree, the works and operations of the railroad, canal, turnpike, or other works to be crossed; and provided such crossing shall be supported by such permanent and proper structures and fixtures, and shall be controlled by such customary and approved appliances, methods, and regulations as will best secure the safe passage and transportation of persons and property along such crossing, and will not be injurious to the works of the company to be crossed. The cost of such crossings, their appliances and apparatus, and of the repair and operation of the same, shall be borne by the party desiring to make the crossing.

§ 56-259. Rights-of-way, etc., may be contracted for; location of easements of public service corporations.

A. Any corporation of the character mentioned in this chapter or in Chapter 2 (§ 56-49 et seq.) may contract with any person or corporation, the owner of lands, or of any interest, franchise, privilege, or easement therein, over, under, or through which any pipeline transmitting petroleum products or natural gas, power or telephone line, sewer or water main or similar works is to be constructed, for the right-of-way for such line, sewer, main or works, and for sufficient land for its necessary offices, plant, or plants, works, stations and structures. All such contracts shall specify with reasonable particularity and definiteness the location of such easement of right-of-way; provided, however, that this provision shall not apply to contracts between any such corporation and any political subdivision of this Commonwealth, but any such corporation shall provide the location of its facilities on land owned by

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59 such a political subdivision upon request of such political subdivision.

60 B. The location of any easement of right-of-way of any public service corporation shall be as
61 specified in the instrument by which such easement was conveyed to such public service corporation;
62 provided that, with respect to all such easements granted after December 31, 1968, if such location is
63 not specified by metes and bounds or by reference to a center line or survey line showing courses and
64 distances from some ascertainable point of beginning, the location of such easement shall be determined
65 by reference to the facilities constructed thereon, and the center line of those facilities shall be the center
66 line of the easement.

67 C. Prior to acquiring any easement of right-of-way, public service corporations will consider the
68 feasibility of locating such facilities on, over, or under existing easements of rights-of-way. In the event
69 any public service corporation owning a right-of-way shall deny a request of any other public service
70 corporation for joint use of that right-of-way, the corporation whose request is denied shall have the
71 right, within thirty days after the denial to apply to the Commission for an order requiring such joint
72 use. The Commission shall conduct a hearing on such application and shall direct the corporation
73 owning the right-of-way to allow joint use if the Commission finds that such joint use is reasonable and
74 that the present or future public utility service of such corporation will not be adversely affected by such
75 joint use. In making such determination, the Commission may establish the terms and conditions for
76 such joint use, including, without limitation, a requirement of compensation by the utility making the
77 request to the utility owning the right-of-way, if the Commission finds such a requirement to be
78 appropriate.

79 D. In any case involving an application for a certificate pursuant to § 56-265.2, the governing body
80 of each locality in which a gas pipeline or electrical transmission line would be located shall have the
81 right to request the Commission to consider directing a joint use of right-of-way within that locality
82 pursuant to the standards in subsection C of this section, provided that the governing body shall file its
83 request no later than the date for public comment on the application established by the Commission.

84 E. *The Commission, as an element of approving an interconnection plan pursuant to § 67-1101, may*
85 *direct the renewable generator, as defined in § 67-1100, proposing the interconnection plan to locate*
86 *transmission facilities that are required to connect its renewable energy facility with the transmission*
87 *grid on, over, or under existing easements of rights-of-way of a public service corporation. If any public*
88 *service corporation owning a right-of-way shall object to a requirement for joint use of that*
89 *right-of-way, the renewable generator shall have the right, exercisable within 30 days after the denial,*
90 *to apply to the Commission for an order requiring such joint use. The Commission shall conduct a*
91 *hearing on such application and shall direct the corporation owning the right-of-way to allow joint use*
92 *if the Commission finds that such joint use is reasonable and that the present or future public utility*
93 *service of such corporation will not be adversely affected by such joint use. In making such*
94 *determination, the Commission may establish the terms and conditions for such joint use, including,*
95 *without limitation, a requirement of compensation by the renewable generator to the utility owning the*
96 *right-of-way, if the Commission finds such a requirement to be appropriate.*

97 CHAPTER 11.

98 RENEWABLE ENERGY INTERCONNECTION.

99 § 67-1100. *Definitions.*

100 *As used in this chapter, unless the context requires otherwise:*

101 *"Approved interconnection plan" means a plan submitted to the Commission pursuant to § 67-1101*
102 *by a renewable generator that has been approved by the Commission.*

103 *"Commission" means the State Corporation Commission.*

104 *"Locality" has the same meaning as contained in § 15.2-102.*

105 *"Public highway" means, for purposes of computing the public rights-of-way use fee, the centerline*
106 *mileage of highways and streets that are part of the State Highway System as defined in § 33.1-25, the*
107 *secondary system of highways as defined in § 33.1-67, the highways of those cities and certain towns*
108 *defined in § 33.1-41.1, and the highways and streets maintained and operated by counties that have*
109 *withdrawn or elect to withdraw from the secondary system of state highways under the provisions of*
110 *§ 11 of Chapter 415 of the Acts of Assembly of 1932 and that have not elected to return.*

111 *"Public rights-of-way use fee" means the fee chargeable to a renewable provider for the occupation*
112 *and use of public parks, streets, roads, highways, works, turnpikes, streets, avenues, and alleys in the*
113 *Commonwealth by a renewable generator for its transmission facilities.*

114 *"Renewable energy facility" means an electrical generating facility that (i) has a capacity of not*
115 *more than 500 kilowatts and (ii) uses as its total source of fuel one or more forms of renewable energy,*
116 *as defined in § 56-576.*

117 *"Renewable generator" means a person that (i) does not have the power of a public service*
118 *corporation to acquire rights-of-way, easements, or other interests in lands as provided in § 56-49 and*
119 *(ii) operates a renewable energy facility pursuant to a permit issued by the Commission under*
120 *subsection D of § 56-580.*

"Restrictions or requirements concerning the use of the public rights-of-way" includes permitting processes; requirements regarding notice, time and location of excavations and repair work; enforcement of the statewide building code; and inspections. Such phrase shall not include any existing franchise fee or public rights-of-way use fee.

"Transmission facilities" includes poles and wires, or cables, or underground conduits by which a renewable generator is able to supply electrical energy generated at its renewable energy facility to the transmission grid.

§ 67-1101. State Corporation Commission approval of interconnection plan required.

A renewable generator shall not be authorized to exercise any of the powers granted under this chapter until it has submitted a plan to the Commission describing in such detail as the Commission may direct by regulation for the interconnection of its renewable energy facility to the transmission grid through transmission facilities. The Commission may establish an expedited process for review and approval of such interconnection plans. In addressing the acquisition of rights to place transmission facilities along its proposed route, an interconnection plan may provide for the co-location of transmission facilities within existing easements of rights-of-way of public service corporations as provided in subsection E of § 56-259, and the occupancy and use of public parks, roads, works, turnpikes, streets, avenues, and alleys as provided in this chapter. The Commission shall approve an interconnection plan if it finds that it is in the public interest.

§ 67-1102. Right to erect lines parallel to existing facilities; occupation of rights-of-way; location of same.

A. Every renewable generator may construct, maintain, and operate transmission facilities parallel to any of the railroads of the Commonwealth, and shall have authority to occupy and use the public parks, roads, works, turnpikes, streets, avenues, and alleys in any county, with the consent of the board of supervisors or other governing authority thereof, or in any incorporated city or town, with the consent of the council thereof, and the waterways within the Commonwealth, for the erection of transmission facilities. However, if the road or street is in the State Highway System or the secondary system of state highways, the consent of the board of supervisors or other governing authority of any county shall not be necessary, provided that a permit for such occupation and use is first obtained from the Commonwealth Transportation Board.

B. No locality or the Commonwealth Transportation Board shall impose any fees on a renewable generator for the use of public rights-of-way except in the manner prescribed in § 67-1104.

C. No locality or the Commonwealth Transportation Board shall impose on renewable generators, whether by franchise, ordinance, or other means, any restrictions or requirements concerning the use of the public rights-of-way that are (i) unfair or unreasonable or (ii) any greater than those imposed on providers of electric utility service.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the Commonwealth Transportation Board of a renewable generator to use the public rights-of-way shall be granted or denied within 45 days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. No locality receiving directly or indirectly a public rights-of-way use fee or the Commonwealth Transportation Board shall require a renewable generator to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the public rights-of-way use fee.

§ 67-1103. Franchise to occupy property of certain localities; imposition of terms and conditions as to use of property.

A. No incorporated city or town shall grant to any renewable generator the right to construct transmission facilities upon or beneath its parks, streets, avenues, or alleys until the renewable generator first obtains, in the manner prescribed by the law, the franchise to occupy the same. Any city or town may impose upon a renewable generator any terms and conditions consistent herewith and supplemental hereto, as to the occupation and use of its parks, streets, avenues, and alleys, and as to the construction and maintenance of the transmission facilities of the renewable generator along, over, or under the same, that the city or town may deem expedient and proper. The Commonwealth Transportation Board may also impose upon any such company any terms, rules, regulations, requirements, restrictions, and conditions consistent herewith and supplemental hereto, as to the occupation and use of roads and streets in either the primary or secondary state highway system, and as to the construction, operation or maintenance of the works along, over, or under the same, that the Board may deem expedient and proper, but not in conflict, in incorporated cities and towns, with any vested contractual rights of any such company with such city or town.

B. No locality or the Commonwealth Transportation Board shall impose any fees on a renewable generator for the use of public rights-of-way except in the manner prescribed in § 67-1104.

182 C. No locality or the Commonwealth Transportation Board shall impose on a renewable generator,
183 whether by franchise, ordinance, or other means, any restrictions or requirements concerning the use of
184 the public rights-of-way that are (i) unfair or unreasonable or (ii) any greater than those imposed on
185 providers of electric utility service.

186 D. Notwithstanding any other provision of law, any permit or other permission required by a locality
187 pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the
188 Commonwealth Transportation Board of a renewable generator to use the public rights-of-way shall be
189 granted or denied within 45 days from submission and, if denied, accompanied by a written explanation
190 of the reasons the permit was denied and the actions required to cure the denial.

191 E. No locality receiving directly or indirectly a public rights-of-way use fee or the Commonwealth
192 Transportation Board shall require a renewable generator to provide in-kind services or physical assets
193 as a condition of consent to use public rights-of-way or easements, or in lieu of the public rights-of-way
194 use fee.

195 § 67-1104. Public rights-of-way use fee.

196 A. Notwithstanding any other provisions of law, there is hereby established a public rights-of-way
197 use fee to be charged in lieu of any and all fees of general application, except for zoning, subdivision,
198 site plan, and comprehensive plan fees of general application, otherwise chargeable to a renewable
199 generator by the Commonwealth Transportation Board or a locality in connection with a permit for
200 such occupation and use granted in accordance with § 67-1102 or 67-1103. The public rights-of-way
201 use fee established by this section is imposed on all renewable generators that occupy and use public
202 rights-of-way in order to connect their renewable energy facility with the transmission grid under an
203 approved interconnection plan.

204 B. The amount of the public rights-of-way use fee for a renewable generator shall be \$50 per mile
205 over which the renewable generator has completed transmission facilities.

206 C. A renewable generator shall remit its required public rights-of-way use fee accrued during a
207 calendar quarter to the locality or the Department of Transportation (VDOT), as applicable, within two
208 months after the end of the preceding calendar quarter, as follows:

209 1. The renewable generator shall remit directly to the applicable locality all public rights-of-way use
210 fees billed in (i) cities; (ii) towns whose public streets and roads are not maintained by VDOT; and (iii)
211 any county that has withdrawn or elects to withdraw from the secondary system of state highways under
212 the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that has elected not to
213 return.

214 2. The public rights-of-way use fees billed in all other counties shall be remitted by each renewable
215 generator to VDOT. VDOT shall allocate the total amount received from renewable generators to the
216 construction improvement program of the secondary system of state highways. Within such allocation to
217 the secondary system, VDOT shall apportion the amounts so received among the several counties, other
218 than those described in clause (iii) of subdivision 1, on the basis of population, with each county being
219 credited a share of the total equal to the proportion that its population bears to the total population of
220 all such counties. For purposes of this section, the term "population" shall mean either population
221 according to the latest United States census or the latest population estimate of the Weldon Cooper
222 Center for Public Service of the University of Virginia, whichever is more recent. Such allocation and
223 apportionment of public rights-of-way use fees shall be in addition to, and not in lieu of, any other
224 allocation of funds to such secondary system and apportionment to counties thereof provided by law.

225 D. Any locality electing to adopt the public rights-of-way use fees by ordinance shall notify all
226 affected renewable generators no later than March 15 preceding the fiscal year. Such notice shall be in
227 writing and sent by certified mail from such locality to the registered agent of the affected renewable
228 generators.

229 § 67-1105. Reimbursement for relocation costs.

230 A. Renewable generators shall be reimbursed 100 percent of the eligible cost of relocating
231 transmission facilities installed in the public rights-of-way incurred at the direction of a locality that
232 imposes by ordinance the public rights-of-way use fee or the Department of Transportation in any
233 public rights-of-way in accordance with §§ 56-458 and 56-462. Such reimbursement shall be received
234 from either (i) the locality that granted the permit or franchise to use such right-of-way or (ii) the
235 Commonwealth Transportation Board if the road or street is in the State Highway System or the
236 secondary system of state highways.

237 B. The amount of relocation reimbursement in any fiscal year to be reimbursed under this section
238 shall not exceed the amount of public rights-of-way use fees received by that locality either directly or
239 through its secondary road fund apportionment in the preceding fiscal year. If the relocation
240 reimbursement limit will be exhausted on a relocation project where two or more renewable generators
241 are eligible for relocation reimbursement, then the moneys available under the cap shall be shared by
242 those renewable generators by prorating the reimbursement based on the reimbursement to which each
243 renewable generator would be entitled absent the limit.

§ 67-1106. Relocation of lines or works of certain public utilities acquired by Commonwealth Transportation Board.

Whenever a renewable generator is required by the Commonwealth Transportation Board or the Commonwealth Transportation Commissioner to remove any part of its transmission facilities off of the right-of-way of a road now or hereafter included in either state highway system, or if any right-of-way, property, or interest therein used and occupied by the renewable generator with its lines or works, or part thereof, is acquired by the Commonwealth Transportation Board or the Commonwealth Transportation Commissioner for the uses of either such highway system, or if the renewable generator is notified by such Board or Commissioner of the desire of such Board or Commissioner to acquire such right-of-way, property, or interest therein, used and occupied by such company with its lines or works, or part thereof, for the uses of either such highway system, the renewable generator may relocate its lines or works, or the part or parts thereof affected.

§ 67-1107. How consent of appropriate authorities obtained; terms of use.

The consent required under § 67-1102, when given, shall be by ordinance regularly adopted by the council or other governing body of the city or town, or by resolution regularly adopted and spread upon the minutes by the board of supervisors or other governing authority of the county in which such line is to be located, or, if such consent is to be given by the Commonwealth Transportation Board, by an order spread upon the minutes of the Board. Such use of the public parks, roads, turnpikes, streets, avenues, and alleys in any of the cities or towns or counties of the Commonwealth shall be subject to such terms, regulations and restrictions as may be imposed by the corporate authorities of any such city or town, or the board of supervisors or other governing authority of any such county, except that if the road or street is in either state highway system, as now or hereafter established, any occupation and use thereof under the provisions of this chapter, whether by consent heretofore or hereafter obtained, shall be subject to such terms, regulations, and restrictions as may be imposed by the Commonwealth Transportation Board not in conflict in incorporated cities and towns with any vested contractual rights of such company with such city or town.

§ 67-1108. Cost to Commonwealth in connection with construction of line to be paid by renewable generator.

The actual costs and expenses of the Commonwealth in the investigation by the Commonwealth Transportation Board of the application of any renewable generator for a permit, and in the supervision of the construction or installation of any of the transmission facilities of the renewable generator, under the provisions of this chapter, shall be borne by the renewable generator, and paid before commencing the use of any road or street in either state highway system, under any permit of the Commonwealth Transportation Board, under the provisions of this chapter, which sum shall be paid into the state treasury to the credit of the state highway fund.

§ 67-1109. Renewable generator may contract for right-of-way.

A renewable generator may contract with any person that owns lands, or any interest, franchise, privilege, or easement therein or in respect thereto, over which transmission facilities are proposed to be constructed, for the right-of-way for erecting, repairing, and preserving its poles and other structures necessary for operating its facilities, and for sufficient land for the erection and occupation of offices at suitable distances along its transmission facilities.

§ 67-1110. Construction of transmission facilities.

All posts, poles, wires, cables, lines, and conduits that shall be erected under any authority conferred by this chapter shall be so located as in no way to obstruct or interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the public parks, roads, turnpikes, streets, avenues, alleys, railroads, or waters in or upon which the same may be erected. All wires, conduits, and cables erected as aforesaid shall be placed at such height as the State Corporation Commission by regulation shall provide. Buried conduits shall be laid at such distance below the surface of any public park, road, turnpike, street, avenue, or alley, and at such distance from the outside of any gas or water main or other conduit already laid under such public park, road, turnpike, street, avenue, or alley, as may be prescribed by the Commission by regulation. No wires, cables, or conduits shall be strung across or laid, nor posts or poles erected, upon the property of any person without first obtaining the consent of the owner thereof. Such poles, wires, cables, and conduits shall not damage private property without compensation therefor, nor in any way obstruct the navigation of any stream, or impair or endanger the use thereof by the public or any other person entitled to the use of the same.

§ 67-1111. Restoring condition of ground.

The portions of the surface of the parks, roads, turnpikes, streets, avenues, or alleys, or of any pavements opened up or disturbed in erecting, repairing, laying or replacing poles, wires, or cables, or in repairing conduits under the provisions of this chapter shall be immediately restored to and maintained in good condition by the renewable generator doing such work. In case of the failure of the

305 *renewable generator to restore and maintain the same, the corporate authorities of the city or town, or*
306 *the board of supervisors or other governing authority of the county, or the chairman of the*
307 *Commonwealth Transportation Board, as the case may be, may properly restore and maintain the same,*
308 *and the costs thereof may be recovered by the city or town, or county, or Commonwealth, from the*
309 *renewable generator, in any court of competent jurisdiction.*