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SENATE BILL NO. 1347

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 56-46.1 and 56-580 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 11.1 of Title 10.1 an article numbered 5, consisting of sections numbered 10.1-1197.5 through 10.1-1197.7, by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03, and by adding a section numbered 58.1-3661, relating to wind energy development; permitting processes, income tax credit, and property taxation of wind turbines and towers.

Patrons—Wagner and Norment

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-46.1 and 56-580 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 11.1 of Title 10.1 an article numbered 5, consisting of sections numbered 10.1-1197.5 through 10.1-1197.7, by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03, and by adding a section numbered 58.1-3661, as follows:

*Article 5.**Small Wind Energy Projects.**§ 10.1-1197.5. Definitions.*

As used in this article, "small wind energy project" means a power generation facility designed, constructed, or installed to convert wind into electrical energy with a rated capacity not exceeding 100 megawatts, and that is not developed or operated by a public utility.

§ 10.1-1197.6. Permits for small wind energy projects.

A. The Department shall develop, by January 1, 2010, a procedure for permitting the construction and operation of small wind energy projects. The Department is hereby designated as the lead agency in coordinating any state agency review of a proposed small wind energy project, including but not limited to any review of the effect of the small wind energy project on birds and other wildlife, and in issuing all state permits or approvals required for the construction and operation of the project that address environmental, conservation, and natural resource issues, including air quality, water quality, waste discharge, and natural resources, including wildlife management.

B. The developer or operator of a small wind energy project shall not be required, as a condition for obtaining any approval of a state agency required for the construction or operation of the project, to:

1. Conduct postconstruction monitoring of the effect of the small wind energy project on birds and other wildlife for a period exceeding one year; or

2. Be subject to financial responsibility for conducting the postconstruction monitoring described in subdivision 1 that exceeds a standard amount that the Department, by regulation, determines is adequate for reasonable monitoring over a one-year period.

§ 10.1-1197.7. No other permit required.

Nothing in this section shall authorize the State Corporation Commission to conduct any review of a small wind energy facility, or to condition the construction or operation of a small wind energy facility upon the State Corporation Commission's issuance of any permit or certificate under any provision of Title 56.

§ 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

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59 to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were
60 considered by, the governmental entity in issuing such permit or approval, and the Commission shall
61 impose no additional conditions with respect to such matters. Nothing in this section shall affect the
62 ability of the Commission to keep the record of a case open. Nothing in this section shall affect any
63 right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed
64 facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the
65 one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a
66 decision approving such proposed facility that is conditioned upon issuance of any environmental permit
67 or approval. In every proceeding under this subsection, the Commission shall receive and give
68 consideration to all reports that relate to the proposed facility by state agencies concerned with
69 environmental protection; and if requested by any county or municipality in which the facility is
70 proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3
71 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (i) shall consider the
72 effect of the proposed facility on economic development within the Commonwealth and (ii) shall
73 consider any improvements in service reliability that may result from the construction of such facility.

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. Any consideration of the effect on the environment that a power generation facility designed, constructed, or installed to convert wind into electrical energy that either has a rated capacity exceeding 100 megawatts or has a rated capacity of 100 megawatts or less that is developed or operated by a public utility shall be conducted by the Department of Environmental Quality, which shall utilize the review process set forth in § 10.1-1197.6. With respect to such facilities:

1. The Commission shall not be authorized to establish conditions regarding any adverse environmental impact; and

2. The Department of Environmental Quality shall not require, as a condition for any approval required for the construction or operation of the project, that the owner or operator of the project, or any other person:

182 a. Conduct postconstruction monitoring of the effect of the small wind energy project on birds and
183 other wildlife for a period exceeding one year; or

184 b. Be subject to financial responsibility for conducting the postconstruction monitoring described in
185 subdivision a that exceeds a standard amount that the Department, by regulation, determines is
186 adequate for reasonable monitoring over a one-year period.

187 J. The provisions of this section shall not apply to the construction and operation of a small wind
188 energy project, as defined in § 10.1-1197.5, for which the Department of Environmental Quality is
189 responsible for issuance of a permit pursuant to Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of
190 Title 10.1.

191 § 56-580. Transmission and distribution of electric energy.

192 A. Subject to the provisions of § 56-585.1, the Commission shall continue to regulate pursuant to this
193 title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent
194 not prohibited by federal law, the transmission of electric energy in the Commonwealth.

195 B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the
196 reliability, quality and maintenance by transmitters and distributors of their transmission and retail
197 distribution systems.

198 C. The Commission shall develop codes of conduct governing the conduct of incumbent electric
199 utilities and affiliates thereof when any such affiliates provide, or control any entity that provides,
200 generation, distribution, or transmission services, to the extent necessary to prevent impairment of
201 competition. Nothing in this chapter shall prevent an incumbent electric utility from offering metering
202 options to its customers.

203 D. The Commission shall permit the construction and operation of electrical generating facilities in
204 Virginia upon a finding that such generating facility and associated facilities (i) will have no material
205 adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are
206 required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007,
207 and if they are to be constructed and operated by any regulated utility whose rates are regulated
208 pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest. *The provisions of this*
209 *subsection shall not apply to the construction and operation of a small wind energy project, as defined*
210 *in § 10.1-1197.5, for which the Department of Environmental Quality has issued a permit pursuant to*
211 *Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1.* In review of a petition for a certificate to
212 construct and operate a generating facility described in this subsection, the Commission shall give
213 consideration to the effect of the facility and associated facilities on the environment and establish such
214 conditions as may be desirable or necessary to minimize adverse environmental impact as provided in
215 § 56-46.1. In order to avoid duplication of governmental activities, any valid permit or approval required
216 for an electric generating plant and associated facilities issued or granted by a federal, state or local
217 governmental entity charged by law with responsibility for issuing permits or approvals regulating
218 environmental impact and mitigation of adverse environmental impact or for other specific public
219 interest issues such as building codes, transportation plans, and public safety, whether such permit or
220 approval is prior to or after the Commission's decision, shall be deemed to satisfy the requirements of
221 this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within
222 the authority of, and were considered by, the governmental entity in issuing such permit or approval,
223 and the Commission shall impose no additional conditions with respect to such matters. Nothing in this
224 section shall affect the ability of the Commission to keep the record of a case open. Nothing in this
225 section shall affect any right to appeal such permits or approvals in accordance with applicable law. In
226 the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious
227 nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission
228 shall not issue a decision approving such proposed facility that is conditioned upon issuance of any
229 environmental permit or approval. *The Commission shall complete any proceeding under this section, or*
230 *under any provision of the Utility Facility Act (§ 56-265.1 et seq.), involving an application for a*
231 *certificate, permit, or approval required for the construction or operation by a public utility of a power*
232 *generation facility designed, constructed, or installed to convert wind into electrical energy within nine*
233 *months following the utility's submission of a complete application therefor.*

234 E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric
235 utilities, and incumbent electric utilities shall continue to provide distribution services within their
236 exclusive service territories as established by the Commission. Subject to the provisions of § 56-585.1,
237 the Commission shall continue to exercise its existing authority over the provision of electric distribution
238 services to retail customers in the Commonwealth including, but not limited to, the authority contained
239 in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

240 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or
241 operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt
242 from the referendum requirement of § 15.2-5403. Nor shall any provision of this chapter apply to any
243 such electric utility unless (i) that municipality or that authority created by a governmental unit exempt

from the referendum requirement of § 15.2-5403 elects to have this chapter apply to that utility or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer eligible to purchase electric energy from any supplier in accordance with § 56-577 if that retail customer is outside the geographic area that was served by such municipality as of July 1, 1999, except (a) any area within the municipality that was served by an incumbent public utility as of that date but was thereafter served by an electric utility owned or operated by a municipality or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 pursuant to the terms of a franchise agreement between the municipality and the incumbent public utility, or (b) where the geographic area served by an electric utility owned or operated by a municipality is changed pursuant to mutual agreement between the municipality and the affected incumbent public utility in accordance with § 56-265.4:1. If an electric utility owned or operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any such utility, mutatis mutandis.

G. The applicability of all provisions of this chapter except § 56-594 to any investor-owned incumbent electric utility supplying electric service to retail customers on January 1, 2003, whose service territory assigned to it by the Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties shall be suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any other service territory in any jurisdiction to customers who have the right to receive retail electric energy from another supplier. During any such suspension period, the utility's rates shall be (i) its capped rates established pursuant to § 56-582 for the duration of the capped rate period established thereunder, and (ii) determined thereafter by the Commission on the basis of such utility's prudently incurred costs pursuant to Chapter 10 (§ 56-232 et seq.) of this title.

H. The expiration date of any certificates granted by the Commission pursuant to subsection D, for which applications were filed with the Commission prior to July 1, 2002, shall be extended for an additional two years from the expiration date that otherwise would apply.

§ 58.1-439.12:03. Wind energy facility investment tax credit.

A. As used in this section, "wind turbine and tower" means the wind turbine installed at a power generation facility designed, constructed, or installed to convert wind into electrical energy and each tower upon which the turbine is affixed, including (i) the rotor, consisting of the blades and the supporting hub; (ii) the drive train, including the remaining rotating parts such as the shafts, gearbox, coupling, a mechanical brake, and the generator; (iii) the nacelle and main frame, including the wind turbine housing, bedplate, and the yaw system; (iv) the turbine transformer; (v) the machine controls; (vi) the tower; and (vii) the tower foundation.

B. For taxable years beginning on and after January 1, 2009, a person shall be allowed a credit against the income taxes imposed pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.) of Chapter 3 in an amount equal to 35 percent of the cost of constructing, purchasing, or leasing wind turbines and towers that the person places in service in the Commonwealth during the taxable year. The entire credit may not be taken for the taxable year in which the property is placed in service but shall be taken in five equal installments beginning with the taxable year in which the property is placed in service.

C. The amount of the credits applied under this section against the tax imposed pursuant to Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.) of Chapter 3 for a taxable year shall not exceed 50 percent of the tax liability otherwise due. Notwithstanding any provisions of this article, no taxpayer shall be eligible to claim a credit of more than \$500,000 per year under this section.

D. If, in one of the years in which the installment of a credit accrues, the wind turbine and tower with respect to which the credit was claimed is disposed of, taken out of service, or moved out of the Commonwealth, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted by this section.

E. No credit is allowed under this section to the extent the cost of the wind turbine and tower was provided by public funds. A taxpayer may not take the credit allowed in this section for wind turbines and towers that the person leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this chapter with respect to the wind turbine and tower.

F. The amount of credit otherwise allowable under this section that cannot be applied for the taxable year due to the limitations of this section may be carried forward, if necessary, to the 10 taxable years following the first taxable year in which such credit is allowed.

G. Credits earned by a partnership, limited liability company, or electing small business corporation (S corporation) shall be allocated to the individual partners, members, or shareholders, respectively, for

305 *their individual income tax, as the partners, members, or shareholders mutually agree as provided in an*
306 *executed document, the form of which shall be prescribed by the Commissioner. If such document has*
307 *not been executed, such credits shall be allocated to the individual partners, members, or shareholders,*
308 *respectively, in proportion to their ownership or interest in such business entities.*

309 *§ 58.1-3661. Wind turbines and towers.*

310 *A. As used in this section, "wind turbine and tower" means the wind turbine installed at a power*
311 *generation facility designed, constructed, or installed to convert wind into electrical energy and each*
312 *tower upon which the turbine is affixed, including (i) the rotor, consisting of the blades and the*
313 *supporting hub; (ii) the drive train, including the remaining rotating parts such as the shafts, gearbox,*
314 *coupling, a mechanical brake, and the generator; (iii) the nacelle and main frame, including the wind*
315 *turbine housing, bedplate, and the yaw system; (iv) the turbine transformer; (v) the machine controls;*
316 *(vi) the tower; and (vii) the tower foundation.*

317 *B. Wind turbines and towers are hereby declared to be (i) tangible personal property used primarily*
318 *for the purpose of abating or preventing pollution of the atmosphere and waters of the Commonwealth*
319 *and (ii) a separate class of property and shall constitute a classification for local taxation separate from*
320 *other classifications of personal property.*

321 *C. Eighty percent of the value of wind turbines and towers shall be exempt from state and local*
322 *taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia. The 20 percent of the value*
323 *of wind turbines and towers that is subject to taxation shall be valued by means of depreciated cost or*
324 *a percentage of original total capitalized cost excluding capitalized interest and the rate of tax thereon*
325 *shall not exceed that applicable generally to machinery and tools.*

326 **2. That the State Corporation Commission and the Department of Environmental Quality shall**
327 **develop joint guidelines for pre-application requirements that shall apply to any wind-powered**
328 **electric generation facility of any size in the Commonwealth, whether developed or operated by a**
329 **public utility or another person. In developing such guidelines, the State Corporation Commission**
330 **and the Department of Environmental Quality shall convene a working group of interested persons**
331 **representing environmental groups, electric utilities, and nonutility generators, who shall be**
332 **afforded the opportunity to provide comment regarding the scope and terms of such guidelines.**