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**HOUSE BILL NO. 103**

Offered January 11, 2012

Prefiled December 29, 2011

*A BILL to amend and reenact § 58.1-3814 of the Code of Virginia, relating to the consumer utility tax; exemption for electric generation facilities.*

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Patron—Loupassi

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Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:****1. That § 58.1-3814 of the Code of Virginia is amended and reenacted as follows:**

§ 58.1-3814. Water or heat, light and power companies.

A. Any county, city or town may impose a tax on the consumers of the utility service or services provided by any water or heat, light and power company or other corporations coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.) of this title, which tax shall not be imposed at a rate in excess of 20 percent of the monthly amount charged to consumers of the utility service and shall not be applicable to any amount so charged in excess of \$15 per month for residential customers. Any city, town or county that on July 1, 1972, imposed a utility consumer tax in excess of limits specified herein may continue to impose such a tax in excess of such limits, but no more. For taxable years beginning on and after January 1, 2001, any tax imposed by a county, city or town on consumers of electricity shall be imposed pursuant to subsections C through J of this section only.

B. Any tax enacted pursuant to the provisions of this section, or any change in a tax or structure already in existence, shall not be effective until 60 days subsequent to written notice by certified mail from the county, city or town imposing such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.

C. Any county, city or town may impose a tax on the consumers of services provided within its jurisdiction by any electric light and power, water or gas company owned by another municipality; provided, that no county shall be authorized under this section to impose a tax within a municipality on consumers of services provided by an electric light and power, water or gas company owned by that municipality. Any county tax imposed hereunder shall not apply within the limits of any incorporated town located within such county which town imposes a town tax on consumers of utility service or services provided by any corporation coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.) of this title, provided that such town (i) provides police or fire protection, and water or sewer services, provided that any such town served by a sanitary district or service authority providing water or sewer services or served by the county in which the town is located when such service or services are provided pursuant to an agreement between the town and county shall be deemed to be providing such water and sewer services itself, or (ii) constitutes a special school district and is operated as a special school district under a town school board of three members appointed by the town council.

Any county, city or town may provide for an exemption from the tax for any public safety answering point as defined in § 58.1-3813.1.

Any municipality required to collect a tax imposed under authority of this section for another city or county or town shall be entitled to a reasonable fee for such collection.

D. In a consolidated county wherein a tier-city exists, any county tax imposed hereunder shall apply within the limits of any tier-city located in such county, as may be provided in the agreement or plan of consolidation, and such tier-city may impose a tier-city tax on the same consumers of utility service or services, provided that the combined county and tier-city rates do not exceed the maximum permitted by state law.

E. The tax authorized by this section shall not apply to utility:

1. *Utility sales of products used as motor vehicle fuels; or*

2. *Natural gas service provided to an electric utility for the purpose of operating a natural gas fueled electricity generation facility that is owned and operated by the electric utility. As used in this subdivision, "electric utility" means any investor-owned public utility or cooperative as defined in § 56-231.15 that provides electric energy for use by retail customers.*

F.1. Any county, city or town may impose a tax on consumers of electricity provided by electric suppliers as defined in § 58.1-400.2.

The tax so imposed shall be based on kilowatt hours delivered monthly to consumers, and shall not exceed the limits set forth in this subsection. The provider of billing services shall bill the tax to all users who are subject to the tax and to whom it bills for electricity service, and shall remit such tax to

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the appropriate locality in accordance with § 58.1-2901. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of electricity shall convert its tax to a tax based on kilowatt hours delivered monthly to consumers, taking into account minimum billing charges. The kilowatt hour tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among electricity consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. The current service provider shall provide to localities no later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to \$3 per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to kilowatt hours. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received from each class of nonresidential consumers in calendar year 1999 for the kilowatt hours used that year. Kilowatt hour tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of kilowatt hours used, and the amount of consumer utility tax paid in calendar year 1999 on the same kilowatt hour usage. The limitations in this section on kilowatt hour rates for nonresidential consumers shall not apply after January 1, 2004. On or before October 31, 2000, any locality imposing a tax on consumers of electricity shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through J of this section. Notice of such amendment shall be provided to service providers in a manner consistent with subsection B of this section except that "registered agent of the provider of billing services" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.

2. For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible customer-generators, as defined in § 56-594, those kilowatt hours supplied from the electric grid to such customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such customer-generators.

G. Until the consumer pays the tax to such provider of billing services, the tax shall constitute a debt to the locality. If any consumer receives and pays for electricity but refuses to pay the tax on the bill that is imposed by a locality, the provider of billing services shall notify the locality of the name and address of such consumer. If any consumer fails to pay a bill issued by a provider of billing services, including the tax imposed by a locality as stated thereon, the provider of billing services shall follow its normal collection procedures with respect to the charge for electric service and the tax, and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for electric service and the tax and (ii) remit the tax portion to the appropriate locality. After the consumer pays the tax to the provider of billing services, the taxes shall be deemed to be held in trust by such provider of billing services until remitted to the localities.

H. Any county, city or town may impose a tax on consumers of natural gas provided by pipeline distribution companies and gas utilities. The tax so imposed shall be based on CCF delivered monthly to consumers and shall not exceed the limits set forth in this subsection. The pipeline distribution company or gas utility shall bill the tax to all users who are subject to the tax and to whom it delivers gas and shall remit such tax to the appropriate locality in accordance with § 58.1-2905. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of gas shall convert to a tax based on CCF delivered monthly to consumers, taking into account minimum billing charges. The CCF tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among gas consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. Current pipeline distribution companies and gas utilities shall provide to localities not later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to \$3 per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to CCF. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received and due from each of the nonresidential gas purchase and gas transportation classes in calendar year 1999 for the CCF used that year. CCF tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of CCF used, and the amount of consumer utility tax paid and due in calendar year 1999 on the same CCF usage. The initial maximum rate of tax imposed under this section shall continue, unless lowered, until December 31, 2003. Beginning January 1, 2004, nothing in this section shall be construed to prohibit or limit any locality from imposing a consumer utility tax on

121 nonresidential customers up to the amount authorized by subsection A.

122 On or before October 31, 2000, any locality imposing a tax on consumers of gas shall duly amend  
123 its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of  
124 subsections C through J of this section. Notice of such amendment shall be provided to pipeline  
125 distribution companies and gas utilities in a manner consistent with subsection B except that "registered  
126 agent of the pipeline distribution company or gas utility" shall be substituted for "registered agent of the  
127 utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not  
128 be effective before the first meter reading after December 31, 2000, prior to which time the tax  
129 previously imposed by the locality shall be in effect.

130 I. Until the consumer pays the tax to such gas utility or pipeline distribution company, the tax shall  
131 constitute a debt to the locality. If any consumer receives and pays for gas but refuses to pay the tax  
132 that is imposed by the locality, the gas utility or pipeline distribution company shall notify the localities  
133 of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a gas utility  
134 or pipeline distribution company, including the tax imposed by a locality, the gas utility or pipeline  
135 distribution company shall follow its normal collection procedures with regard to the charge for the gas  
136 and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount  
137 collected between the charge for gas service and the tax and (ii) remit the tax portion to the appropriate  
138 locality. After the consumer pays the tax to the gas utility or pipeline distribution company, the taxes  
139 shall be deemed to be held in trust by such gas utility or pipeline distribution company until remitted to  
140 the localities.

141 J. For purposes of this section:

142 "Class of consumers" means a category of consumers served under a rate schedule established by the  
143 pipeline distribution company and approved by the State Corporation Commission.

144 "Gas utility" has the same meaning as provided in § 56-235.8.

145 "Pipeline distribution company" has the same meaning as provided in § 58.1-2600.

146 "Service provider" and "provider of billing services" have the same meanings as provided in  
147 subsection E of § 58.1-2901, and "class" of consumers means a category of consumers defined as a class  
148 by their service provider.

149 K. Nothing in this section shall prohibit a locality from enacting an ordinance or other local law to  
150 allow such locality to impose a tax on consumers of natural gas provided by pipeline distribution  
151 companies and gas utilities, beginning at such time as natural gas service is first made available in such  
152 locality. The maximum amount of tax imposed on residential consumers based on CCF delivered  
153 monthly to consumers shall not exceed \$3 per month. The maximum tax rate imposed by such locality  
154 on nonresidential consumers based on CCF delivered monthly to consumers shall not exceed an average  
155 of the tax rates on nonresidential consumers of natural gas in effect (at the time natural gas service is  
156 first made available in such locality) in localities whose residents are being provided natural gas from  
157 the same pipeline distribution company or gas utility or both that is also providing natural gas to the  
158 residents of such locality. Beginning January 1, 2004, the tax rates for residential and nonresidential  
159 consumers of natural gas in such locality shall be determined in accordance with the provisions of  
160 subsection H.

161 2. That the provisions of this act shall not apply in any case or proceeding pending on the  
162 effective date of this act before any agency of the Commonwealth.