

# VIRGINIA ACTS OF ASSEMBLY -- 2016 RECONVENED SESSION

## CHAPTER 771

*An Act to amend the Code of Virginia by adding a section numbered 56-235.11, relating to the Economic Development Infrastructure Act of 2016; voluntary program authorizing public utilities to acquire utility right-of-way for qualified economic development sites.*

[S 748]

Approved April 20, 2016

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

**1. That the Code of Virginia is amended by adding a section numbered 56-235.11 as follows:**

**§ 56-235.11. Economic Development Programs.**

**A. As used in this section:**

*"Acquire utility right-of-way" means the planning, surveying, permitting, and acquisition of land, including options, easements, and other estates in land.*

*"Costs" includes depreciation, taxes, return on investment, and other land-related costs associated with costs incurred to acquire utility right-of-way pursuant to a Program.*

*"Economic Development Program" or "Program" means a program under which a utility is authorized by the Commission under this section to acquire utility right-of-way for a qualified economic development site.*

*"Partnership" means the Virginia Economic Development Partnership Authority.*

*"Qualified economic development site" means a site within the Commonwealth that has been certified by the Partnership pursuant to subsection B.*

*"Utility" means a public utility providing electric or natural gas service to retail customers in the Commonwealth.*

*B. The Partnership is authorized to certify that a site is a qualified economic development site if its President and Chief Executive Officer finds that:*

*1. The person with legal authority to develop the site is authorized to contract for the extension of utility service to the site;*

*2. The proposed development of the site is compliant with applicable zoning requirements and is consistent with the locality's comprehensive plan;*

*3. Applicable environmental surveys and reviews, including any wetlands survey, geotechnical borings, a topographical survey, a cultural resources review, an endangered species review, or a Phase I environmental site assessment, if required, are completed;*

*4. An estimate of the costs of the development of the site has been prepared and provided to the Partnership; and*

*5. The acquisition of utility right-of-way for the site will further the creation of new jobs and capital investment in the Commonwealth by facilitating the location of one or more significant economic development projects in the Commonwealth.*

*C. A utility proposing an Economic Development Program shall file a proposal with the Commission for review. A proposal for approval of a Program shall (i) include an analysis of how implementation of the Program will provide significant economic development benefits and (ii) identify prospective customers to be served under the Program, to the extent reasonably foreseeable.*

*D. The Commission shall approve, or approve with appropriate modifications, a proposed Program if it finds that:*

*1. The implementation of the proposed Program will provide significant economic development benefits that might not otherwise be attained absent the Commission's approval of the proposed Program;*

*2. The Program, if proposed:*

*a. By a natural gas utility, authorizes the utility to recover its costs incurred in implementing the Program through a supplemental surcharge payable only by its retail customers at the qualified economic development site that connect to natural gas line extensions installed in utility right-of-way or other interests in real property acquired through the Program. The Program shall require the utility to charge any such customers for service at standard tariff provisions applicable to such customers, in addition to the surcharge. The amount of the surcharge shall provide only for the recovery of that portion of the costs, including costs deferred from the time incurred until the Commission authorizes the utility to commence assessing such surcharge, that would not be supported by the utility's estimated revenue from such customers under the utility's otherwise applicable rate schedules. The surcharge shall remain in effect until the costs are recovered from such customers; however, the Commission shall be authorized from time to time to adjust the surcharge payable by each such customer if the number of customers changes during such period in order to provide that the surcharges are assessed in an*

*equitable and nondiscriminatory manner based on each customer's consumption of natural gas at the qualified economic development site; or*

*b. By an electric utility, will authorize the utility to recover its transmission-related costs incurred in implementing the Program through a rate adjustment clause pursuant to subdivision A 4 of § 56-585.1.*

*3. The proposed acquisition of utility right-of-way would not otherwise be immediately supported by expected revenues from new loads served under the Program at the qualified economic development site;*

*4. The utility's capital investment does not exceed \$10 million in the aggregate of all of the utility's Programs or \$5 million for any specific qualified economic development site;*

*5. The associated charges resulting from implementation of the Program if proposed by a natural gas utility will not impact the rates of customers other than customers receiving service at the qualified economic development site;*

*6. The proposed Program otherwise meets the requirements of this section;*

*7. The Partnership has certified pursuant to subsection B that the site for which the utility proposes to acquire utility right-of-way under the proposed Program is a qualified economic development site;*

*8. The utility's assumptions regarding prospective loads connected to service extensions made under the Program are not unduly speculative; and*

*9. The Program is not otherwise contrary to the public interest.*

*E. After Commission review and absent action by the Commission to the contrary, the Program shall take effect 180 days following the date on which the proposal for the Program was filed. Any proposed amendment to a Program following its implementation shall be submitted to the Commission at least 90 days prior to the proposed effective date thereof and, absent action by the Commission to the contrary, the amendment shall become effective on such date.*

*F. The Commission's approval of a proposed Program shall authorize:*

*1. The utility to acquire utility right-of-way for the ordinary extension of utility facilities in the normal course of business to one or more qualified economic development sites as provided in the approved Program; and*

*2. A natural gas utility to recover costs incurred in implementing the Program through a supplemental surcharge as described in subdivision D 2 a.*

*G. A utility, in implementing a Program, shall in good faith coordinate the acquisition of right-of-way with other utilities so that any facilities ultimately to be constructed may be collocated to the extent feasible.*

*H. In calculating the natural gas utility's return on the investment with regard to costs incurred in implementing a Program, the Commission shall use the natural gas utility's regulatory capital structure, including the cost of equity most recently approved by the Commission. If the natural gas utility's cost of capital at the time its proposed surcharge is filed has not been changed by order of the Commission within the preceding five years, the Commission may require the natural gas utility to file an updated weighted average cost of capital, and the natural gas utility may propose an updated weighted average cost of capital.*

*I. Nothing in this section shall:*

*1. Be deemed to prevent one or more utilities from jointly filing a Program under this section, and the Commission may consolidate consideration of Programs filed to serve the same qualified economic development site; or*

*2. Otherwise impair or enlarge the powers granted to public service companies by this title.*

*J. A utility may request proprietary treatment of any and all supporting materials regarding prospective loads to be served under a Program.*

*K. A Program shall not have as its primary purpose the conversion of propane customers to natural gas or electricity.*

*L. Nothing in this section shall authorize any natural gas utility or any firm, corporation, company, or partnership that is organized for the bona fide purpose of operating as a natural gas company as defined in 15 U.S.C. § 717a to acquire utility right-of-way for or in furtherance of an interstate natural gas pipeline or related infrastructure.*

**2. That nothing in this act shall change any existing law governing electric utility ratemaking and cost recovery. If an electric utility elects to file a plan as set forth in this act, any cost recovery shall be in accordance with existing law governing electric utility ratemaking and cost recovery.**

**3. That the provisions of this act shall not become effective unless reenacted by the 2017 Session of the General Assembly.**