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SENATE BILL NO. 748

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Commerce and Labor)
 (Patron Prior to Substitute—Senator Wagner)
 Senate Amendments in [] — February 16, 2016

A BILL 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.

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 1 Environmental 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 service under 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 material economic development benefits that might not otherwise be attained absent the Commission's approval of the proposed Program;

2. The Program proposes a rate adjustment clause that authorizes the utility to recover its costs incurred in implementing the Program until such time as the investment is otherwise included in the utility's rates;

3. The proposed acquisition of 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 will not in the aggregate impact an average residential consumer by more than one dollar on an annual basis;

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

7. The Virginia Economic Development 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

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60 *qualified economic development site;*

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

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

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

69 *F. The Commission's approval of a proposed Program shall authorize the utility to:*

70 *1. Acquire utility right of way for the ordinary extension of utility facilities in the normal course of*
71 *business to one or more qualified economic development sites; and*

72 *2. Recover costs incurred in implementing the Program through a rate adjustment clause described*
73 *in subdivision D 2, including costs deferred from the time incurred until the time that the Commission*
74 *establishes new rates that include recovery of such deferred costs.*

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

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

84 *I. Nothing in this section shall:*

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

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

89 *3. Permit a utility to convert existing retail propane customers to electric or natural gas] .*

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