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**HOUSE BILL NO. 1800**

Offered January 11, 2017

Prefiled January 9, 2017

A *BILL to amend and reenact § 56-577 of the Code of Virginia, relating to electric utility regulation; retail sales of renewable energy under third party power purchase agreements.*

Patron—Toscano

Referred to Committee on Commerce and Labor

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

**1. That § 56-577 of the Code of Virginia is amended and reenacted as follows:**

**§ 56-577. Schedule for transition to retail competition; Commission authority; exemptions; pilot programs.**

A. Retail competition for the purchase and sale of electric energy shall be subject to the following provisions:

1. Each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which entity may be an independent system operator, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § 56-579.

2. The generation of electric energy shall be subject to regulation as specified in this chapter.

3. From January 1, 2004, until the expiration or termination of capped rates, all retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth. After the expiration or termination of capped rates, and subject to the provisions of subdivisions 4 and 5, only individual retail customers of electric energy within the Commonwealth, regardless of customer class, whose demand during the most recent calendar year exceeded five megawatts but did not exceed one percent of the customer's incumbent electric utility's peak load during the most recent calendar year unless such customer had noncoincident peak demand in excess of 90 megawatts in calendar year 2006 or any year thereafter, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving the exclusive service territory in which such a customer is located, subject to the following conditions:

a. If such customer does not purchase electric energy from licensed suppliers after that date, such customer shall purchase electric energy from its incumbent electric utility.

b. Except as provided in subdivision 4, the demands of individual retail customers may not be aggregated or combined for the purpose of meeting the demand limitations of this provision, any other provision of this chapter to the contrary notwithstanding. For the purposes of this section, each noncontiguous site will nevertheless constitute an individual retail customer even though one or more such sites may be under common ownership of a single person.

c. If such customer does purchase electric energy from licensed suppliers after the expiration or termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the incumbent electric utility without giving five years' advance written notice of such intention to such utility, except where such customer demonstrates to the Commission, after notice and opportunity for hearing, through clear and convincing evidence that its supplier has failed to perform, or has anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of the customer, and that such customer is unable to obtain service at reasonable rates from an alternative supplier. If, as a result of such proceeding, the Commission finds it in the public interest to grant an exemption from the five-year notice requirement, such customer may thereafter purchase electric energy at the costs of such utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the remainder of the five-year notice period, after which point the customer may purchase electric energy from the utility under rates, terms and conditions determined pursuant to § 56-585.1. However, such customer shall be allowed to individually purchase electric energy from the utility under rates, terms, and conditions determined pursuant to § 56-585.1 if, upon application by such customer, the Commission finds that neither such customer's incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such petition. In making such determination, the Commission shall take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent electric utility. Any customer

INTRODUCED

HB1800

59 that returns to purchase electric energy from its incumbent electric utility, before or after expiration of  
60 the five-year notice period, shall be subject to minimum stay periods equal to those prescribed by the  
61 Commission pursuant to subdivision C 1.

62 d. The costs of serving a customer that has received an exemption from the five-year notice  
63 requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the  
64 actual expenses of procuring such electric energy from the market, (ii) additional administrative and  
65 transaction costs associated with procuring such energy, including, but not limited to, costs of  
66 transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin as determined  
67 pursuant to the provisions of subdivision A 2 of § 56-585.1. The methodology established by the  
68 Commission for determining such costs shall ensure that neither utilities nor other retail customers are  
69 adversely affected in a manner contrary to the public interest.

70 4. After the expiration or termination of capped rates, two or more individual nonresidential retail  
71 customers of electric energy within the Commonwealth, whose individual demand during the most recent  
72 calendar year did not exceed five megawatts, may petition the Commission for permission to aggregate  
73 or combine their demands, for the purpose of meeting the demand limitations of subdivision 3, so as to  
74 become qualified to purchase electric energy from any supplier of electric energy licensed to sell retail  
75 electric energy within the Commonwealth under the conditions specified in subdivision 3. The  
76 Commission may, after notice and opportunity for hearing, approve such petition if it finds that:

77 a. Neither such customers' incumbent electric utility nor retail customers of such utility that do not  
78 choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary  
79 to the public interest by granting such petition. In making such determination, the Commission shall take  
80 into consideration, without limitation, the impact and effect of any and all other previously approved  
81 petitions of like type with respect to such incumbent electric utility; and

82 b. Approval of such petition is consistent with the public interest.

83 If such petition is approved, all customers whose load has been aggregated or combined shall  
84 thereafter be subject in all respects to the provisions of subdivision 3 and shall be treated as a single,  
85 individual customer for the purposes of said subdivision. In addition, the Commission shall impose  
86 reasonable periodic monitoring and reporting obligations on such customers to demonstrate that they  
87 continue, as a group, to meet the demand limitations of subdivision 3. If the Commission finds, after  
88 notice and opportunity for hearing, that such group of customers no longer meets the above demand  
89 limitations, the Commission may revoke its previous approval of the petition, or take such other actions  
90 as may be consistent with the public interest.

91 5. After the expiration or termination of capped rates, individual retail customers of electric energy  
92 within the Commonwealth, regardless of customer class, shall be permitted:

93 a. To purchase electric energy provided 100 percent from renewable energy from any supplier of  
94 electric energy licensed to sell retail electric energy within the Commonwealth, other than any  
95 incumbent electric utility that is not the incumbent electric utility serving the exclusive service territory  
96 in which such a customer is located, if the incumbent electric utility serving the exclusive service  
97 territory does not offer an approved tariff for electric energy provided 100 percent from renewable  
98 energy; and

99 b. To continue purchasing renewable energy pursuant to the terms of a power purchase agreement in  
100 effect on the date there is filed with the Commission a tariff for the incumbent electric utility that serves  
101 the exclusive service territory in which the customer is located to offer electric energy provided 100  
102 percent from renewable energy, for the duration of such agreement; and

103 c. *To own and operate, or contract with other persons to own, operate, or both, a renewable*  
104 *electrical generating facility under a third party power purchase agreement, on the customer's premises*  
105 *that meets the "eligible customer-generator" requirements under subsection B of § 56-594 for*  
106 *nonresidential customers and agricultural customers.*

107 6. A tariff for one or more classes of residential customers filed with the Commission for approval  
108 by a cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric energy provided  
109 100 percent from renewable energy if it provides undifferentiated electric energy and the cooperative  
110 retires a quantity of renewable energy certificates equal to 100 percent of the electric energy provided  
111 pursuant to such tariff. A tariff for one or more classes of nonresidential customers filed with the  
112 Commission for approval by a cooperative on or after July 1, 2012, shall be deemed to offer a tariff for  
113 electric energy provided 100 percent from renewable energy if it provides undifferentiated electric  
114 energy and the cooperative retires a quantity of renewable energy certificates equal to 100 percent of the  
115 electric energy provided pursuant to such tariff. For purposes of this section, "renewable energy  
116 certificate" means, with respect to cooperatives, a tradable commodity or instrument issued by a regional  
117 transmission entity or affiliate or successor thereof in the United States that validates the generation of  
118 electricity from renewable energy sources or that is certified under a generally recognized renewable  
119 energy certificate standard. One renewable energy certificate equals 1,000 kWh or one MWh of  
120 electricity generated from renewable energy. A cooperative offering electric energy provided 100 percent

121 from renewable energy pursuant to this subdivision that involves the retirement of renewable energy  
122 certificates shall disclose to its retail customers who express an interest in purchasing energy pursuant to  
123 such tariff (i) that the renewable energy is comprised of the retirement of renewable energy certificates,  
124 (ii) the identity of the entity providing the renewable energy certificates, and (iii) the sources of  
125 renewable energy being offered.

126 B. The Commission shall promulgate such rules and regulations as may be necessary to implement  
127 the provisions of this section.

128 C. 1. By January 1, 2002, the Commission shall promulgate regulations establishing whether and, if  
129 so, for what minimum periods, customers who request service from an incumbent electric utility  
130 pursuant to subsection D of § 56-582 or a default service provider, after a period of receiving service  
131 from other suppliers of electric energy, shall be required to use such service from such incumbent  
132 electric utility or default service provider, as determined to be in the public interest by the Commission.

133 2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the  
134 management and control of an incumbent electric utility's transmission assets to a regional transmission  
135 entity after approval of such transfer by the Commission under § 56-579, retail customers of such utility  
136 (a) purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods  
137 prescribed by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such  
138 minimum stay obligations by agreeing to purchase electric energy at the market-based costs of such  
139 utility or default providers after a period of obtaining electric energy from another supplier. Such costs  
140 shall include (i) the actual expenses of procuring such electric energy from the market, (ii) additional  
141 administrative and transaction costs associated with procuring such energy, including, but not limited to,  
142 costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin. The  
143 methodology of ascertaining such costs shall be determined and approved by the Commission after  
144 notice and opportunity for hearing and after review of any plan filed by such utility to procure electric  
145 energy to serve such customers. The methodology established by the Commission for determining such  
146 costs shall be consistent with the goals of (a) promoting the development of effective competition and  
147 economic development within the Commonwealth as provided in subsection A of § 56-596, and (b)  
148 ensuring that neither incumbent utilities nor retail customers that do not choose to obtain electric energy  
149 from alternate suppliers are adversely affected.

150 3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585,  
151 however, any such customers exempted from any applicable minimum stay periods as provided in  
152 subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their incumbent  
153 electric utilities, or from any distributor required to provide default service under subsection B of  
154 § 56-585, at the capped rates established under § 56-582, unless such customers agree to satisfy any  
155 minimum stay period then applicable while obtaining retail electric energy at capped rates.

156 4. The Commission shall promulgate such rules and regulations as may be necessary to implement  
157 the provisions of this subsection, which rules and regulations shall include provisions specifying the  
158 commencement date of such minimum stay exemption program.