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HOUSE BILL NO. 1184

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor on February 24, 2020)

(Patron Prior to Substitute—Delegate Lopez)

A BILL to amend and reenact §§ 56-594 and 67-102 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 56-1.2:2 and 56-594.3, and to repeal Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017, relating to the regulation of sales of electricity under third-party sales agreements; net energy; and the removal of other barriers to the increased implementation of distributed solar and other renewable energy in the Commonwealth.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-594 and 67-102 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 56-1.2:2 and 56-594.3 as follows:

§ 56-1.2:2. Sale of electricity in connection with the sale of a renewable generation facility pursuant to a third-party power purchase agreement.

A. As used in this section and § 56-1.2, unless the context requires a different meaning:

"Renewable energy facility" means a facility that generates electricity derived entirely from sources of renewable energy as defined in § 56-576.

"Third-party power purchase agreement" means a power purchase agreement under which a seller sells electricity to a customer from a renewable energy facility located on premises owned or leased by a customer.

B. The sale of electricity generated at a renewable energy facility by a person that is not a public utility, public service corporation, or public service company to a customer that is purchasing or leasing the renewable energy facility shall not constitute the retail sale of electricity subject to regulation under this title.

C. The provisions of this section shall apply only to the sale of electricity in the certificated service territories of investor-owned utilities.

§ 56-594. Net energy metering provisions.

A. The Commission shall establish by regulation a program that affords eligible customer-generators the opportunity to participate in net energy metering, and a program, to begin no later than July 1, 2014, for customers of investor-owned utilities and to begin no later than July 1, 2015, and to end July 1, 2019, for customers of electric cooperatives as provided in subsection G, to afford eligible agricultural customer-generators the opportunity to participate in net energy metering. The regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners or operators of distribution or transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; (v) eligible agricultural customer-generators; or (vi) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such requirements do not adversely affect the public interest. On and after July 1, 2017, small agricultural generators or eligible agricultural customer-generators may elect to interconnect pursuant to the provisions of this section or as small agricultural generators pursuant to § 56-594.2, but not both. Existing eligible agricultural customer-generators may elect to become small agricultural generators, but may not revert to being eligible agricultural customer-generators after such election. On and after July 1, 2019, interconnection of eligible agricultural customer-generators shall cease for electric cooperatives only, and such facilities shall interconnect solely as small agricultural generators. For electric cooperatives, eligible agricultural customer-generators whose renewable energy generating facilities were interconnected before July 1, 2019, may continue to participate in net energy metering pursuant to this section for a period not to exceed 25 years from the date of their renewable energy generating facility's original interconnection.

B. For the purpose of this section:

"Eligible agricultural customer-generator" means a customer that operates a renewable energy generating facility as part of an agricultural business, which generating facility (i) uses as its sole energy source solar power, wind power, or aerobic or anaerobic digester gas, (ii) does not have an aggregate generation capacity of more than 500 kilowatts, (iii) is located on land owned or controlled by the agricultural business, (iv) is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (v) is interconnected and operated in parallel with an electric company's transmission and distribution facilities, and (vi) is used primarily to provide energy to metered accounts of the agricultural business. An eligible agricultural customer-generator may be served by multiple meters *serving the eligible agricultural customer-generator* that are located at ~~separate but~~

~~contiguous~~ *the same or adjacent* sites, such that the eligible agricultural customer-generator may aggregate in a single account the electricity consumption and generation measured by the meters, provided that the same utility serves all such meters. The aggregated load shall be served under the appropriate tariff.

"Eligible customer-generator" means a customer that owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than 20 kilowatts for residential customers and not more than ~~one megawatt~~ *three megawatts* for nonresidential customers ~~on an electrical generating facility placed in service after July 1, 2015~~; (ii) uses as its total source of fuel renewable energy, as defined in § 56-576; (iii) is located on ~~the customer's premises~~ *land owned or leased by the customer* and is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements. In addition to the electrical generating facility size limitations in clause (i), the capacity of any generating facility installed under this section after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available. *Any generating facility installed under this section after July 1, 2002, may be located at the same site or an adjacent site. In addition to the electrical generating facility size limitation in clause (i), in the certificated service territory of a Phase I Utility, the capacity of any generating facility installed under this section after July 1, 2020, shall not exceed 100 percent of the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available, and in the certificated service territory of a Phase II Utility, the capacity of any generating facility installed under this section after July 1, 2020, shall not exceed 150 percent of the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.*

"Income qualifying customer" means an individual or household with an income of not more than 60 percent of the state median income or area median income, whichever is greater, based on U.S. Department of Housing and Urban Development guidelines. In addition, a person shall also be considered an income qualifying customer if he is eligible to participate in any of the following programs: the Home Energy Assistance Program; the state plan for medical assistance; the Supplemental Nutrition Assistance Programs; the Special Supplemental Nutrition Programs for Women, Infants and Children; the Housing Choice Voucher Program; the Family Access to Medical Insurance Security Plan; or Temporary Assistance for Needy Families.

"Net energy metering" means measuring the difference, over the net metering period, between (i) electricity supplied to an eligible customer-generator or eligible agricultural customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible customer-generator or eligible agricultural customer-generator.

"Net metering period" means the 12-month period following the date of final interconnection of the eligible customer-generator's or eligible agricultural customer-generator's system with an electric service provider, and each 12-month period thereafter.

"Small agricultural generator" has the same meaning that is ascribed to that term in § 56-594.2.

C. The Commission's regulations shall ensure that (i) the metering equipment installed for net metering shall be capable of measuring the flow of electricity in two directions and (ii) any eligible customer-generator seeking to participate in net energy metering shall notify its supplier and receive approval to interconnect prior to installation of an electrical generating facility. The electric distribution company shall have 30 days from the date of notification for residential facilities, and 60 days from the date of notification for nonresidential facilities, to determine whether the interconnection requirements have been met. Such regulations shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-generator's electrical generating system, and each electrical generating system of an eligible agricultural customer-generator, shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the requirements set forth in this section and to ensure public safety, power quality, and reliability of the supplier's electric distribution system, an eligible customer-generator or eligible agricultural customer-generator whose electrical generating system meets those standards and rules shall bear all reasonable costs of equipment required for the interconnection to the supplier's electric distribution system, including costs, if any, to (a) install additional controls, (b) perform or pay for additional tests, and (c) purchase additional liability insurance.

D. The Commission shall establish minimum requirements for contracts to be entered into by the parties to net metering arrangements. Such requirements shall protect the eligible customer-generator or eligible agricultural customer-generator against discrimination by virtue of its status as an eligible

customer-generator or eligible agricultural customer-generator, and permit customers that are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariffs to participate as an eligible customer-generator or eligible agricultural customer-generator. Notwithstanding the cost allocation provisions of subsection C, eligible customer-generators or eligible agricultural customer-generators served on demand charge-based time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.

E. If electricity generated by an eligible customer-generator or eligible agricultural customer-generator over the net metering period exceeds the electricity consumed by the eligible customer-generator or eligible agricultural customer-generator, the customer-generator or eligible agricultural customer-generator shall be compensated for the excess electricity if the entity contracting to receive such electric energy and the eligible customer-generator or eligible agricultural customer-generator enter into a power purchase agreement for such excess electricity. Upon the written request of the eligible customer-generator or eligible agricultural customer-generator, the supplier that serves the eligible customer-generator or eligible agricultural customer-generator shall enter into a power purchase agreement with the requesting eligible customer-generator or eligible agricultural customer-generator that is consistent with the minimum requirements for contracts established by the Commission pursuant to subsection D. The power purchase agreement shall obligate the supplier to purchase such excess electricity at the rate that is provided for such purchases in a net metering standard contract or tariff approved by the Commission, unless the parties agree to a higher rate. The eligible customer-generator or eligible agricultural customer-generator owns any renewable energy certificates associated with its electrical generating facility; however, at the time that the eligible customer-generator or eligible agricultural customer-generator enters into a power purchase agreement with its supplier, the eligible customer-generator or eligible agricultural customer-generator shall have a one-time option to sell the renewable energy certificates associated with such electrical generating facility to its supplier and be compensated at an amount that is established by the Commission to reflect the value of such renewable energy certificates. Nothing in this section shall prevent the eligible customer-generator or eligible agricultural customer-generator and the supplier from voluntarily entering into an agreement for the sale and purchase of excess electricity or renewable energy certificates at mutually-agreed upon prices if the eligible customer-generator or eligible agricultural customer-generator does not exercise its option to sell its renewable energy certificates to its supplier at Commission-approved prices at the time that the eligible customer-generator or eligible agricultural customer-generator enters into a power purchase agreement with its supplier. All costs incurred by the supplier to purchase excess electricity and renewable energy certificates from eligible customer-generators or eligible agricultural customer-generators shall be recoverable through its Renewable Energy Portfolio Standard (RPS) rate adjustment clause, if the supplier has a Commission-approved RPS plan. If not, then all costs shall be recoverable through the supplier's fuel adjustment clause. For purposes of this section, "all costs" shall be defined as the rates paid to the eligible customer-generator or eligible agricultural customer-generator for the purchase of excess electricity and renewable energy certificates and any administrative costs incurred to manage the eligible customer-generator's or eligible agricultural customer-generator's power purchase arrangements. The net metering standard contract or tariff shall be available to eligible customer-generators or eligible agricultural customer-generators on a first-come, first-served basis in each electric distribution company's Virginia service area until the rated generating capacity owned and operated by eligible customer-generators, eligible agricultural customer-generators, and small agricultural generators in the Commonwealth reaches ~~one~~ *six* percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year (the systemwide cap), and shall require the supplier to pay the eligible customer-generator or eligible agricultural customer-generator for such excess electricity in a timely manner at a rate to be established by the Commission. *Within such systemwide cap, one percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year shall be reserved for income qualifying customers. The supplier shall develop, under the supervision of the State Corporation Commission, a system to allow income qualifying customers to identify themselves as eligible for the reserved income qualifying customers portion of the systemwide cap.*

F. Any residential eligible customer-generator or eligible agricultural customer-generator, *in the service territory of a Phase II Utility* who owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility with a capacity that exceeds 10 kilowatts shall pay to its supplier, in addition to any other charges authorized by law, a monthly standby charge. The amount of the standby charge and the terms and conditions under which it is assessed shall be in accordance with a methodology developed by the supplier and approved by the Commission. The Commission shall approve a supplier's proposed standby charge methodology if it finds that the standby charges collected from all such eligible customer-generators and eligible agricultural customer-generators allow the supplier to recover only the portion of the supplier's infrastructure costs that are properly associated with

serving such eligible customer-generators or eligible agricultural customer-generators. Such an eligible customer-generator or eligible agricultural customer-generator shall not be liable for a standby charge until the date specified in an order of the Commission approving its supplier's methodology.

G. On and after the later of July 1, 2019, or the effective date of regulations that the Commission is required to adopt pursuant to § 56-594.01, (i) net energy metering in the service territory of each electric cooperative shall be conducted as provided in a program implemented pursuant to § 56-594.01 and (ii) the provisions of this section shall not apply to net energy metering in the service territory of an electric cooperative except as provided in § 56-594.01.

H. A person that owns or operates a solar-powered or wind-powered electricity generation facility located on premises owned or leased by an eligible customer-generator shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement used to provide third-party financing of the costs of such a renewable generation facility (third-party power purchase agreement), subject to the following terms, conditions, and restrictions:

1. In the service territory of a Phase I Utility, jurisdictional and non-jurisdictional customers' generation facilities having a capacity of no less than 50 kilowatts may be subject to a third-party power purchase agreement; the aggregated capacity of all such jurisdictional and non-jurisdictional customers' generation facilities subject to third-party power purchase agreement shall not exceed 40 megawatts. The aggregated capacity of all jurisdictional and non-jurisdictional customers' generation facilities subject to such third-party power purchase agreements in the service territory of a Phase II Utility shall not exceed 500 megawatts. For any investor-owned utility that is not a Phase I or Phase II Utility, the aggregated capacity of all customers' generation facilities having a capacity of no less than 50 kilowatts and subject to such third-party power purchase agreements in the service territory of a utility, other than a Phase I or Phase II Utility, shall not exceed 10 megawatts for jurisdictional customers, and there shall be no cap on the aggregated capacity of non-jurisdictional customers' or residential customers' generation facilities subject to third-party power purchase agreements.

2. Such limitation on the aggregated capacity of such facilities shall constitute a portion of the existing limit of six percent of each utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to subsection E. The seller and the customer shall elect either to (i) enter into their third-party power purchase agreement subject to the conditions and provisions of the utility's net energy metering program under this section or (ii) provide that electricity generated from the generation facilities subject to the third-party power purchase agreement will not be net metered under this section, except that the customer under a third-party power purchase agreement shall, regardless of such election, be subject to the interconnection and safety requirements imposed on eligible customer-generators and eligible agricultural customer-generators.

I. For purposes of this section, the Commission shall liberally construe eligible customer-generators' rights to contract with other persons to own or operate, or both, an electrical generating facility, and such rights shall include the right to finance electrical generating facilities via leases and power purchase agreements. Nothing in this section shall be construed as (i) rendering any person that contracts with such eligible customer-generator pursuant to this section to be a public utility or a competitive service provider; (ii) imposing a requirement that such a person meet 100 percent of the load requirements for each customer account it serves; or (iii) affecting leases, power purchase agreements, or other third-party financing arrangements in effect prior to July 1, 2020.

§ 56-594.3. Third-party power purchase agreements.

A. As used in this section, unless the context requires a different meaning:

"Renewable energy facility" means a facility that generates electricity derived entirely from sources of renewable energy as defined in § 56-576.

"Seller" means a person that owns or operates a renewable energy facility located on premises owned or leased by a customer.

"Third-party power purchase agreement" means a power purchase agreement under which a seller sells electricity to a customer from a renewable energy facility located on premises owned or leased by a customer.

B. A seller shall be permitted to sell the electricity generated from a renewable energy facility exclusively to the customer on whose premises the renewable energy facility is located under a third-party power purchase agreement, subject to the following terms, conditions, and restrictions:

1. A renewable energy facility that is the subject of a third-party power purchase agreement shall serve only one customer, and a third-party power purchase agreement shall not serve multiple customers unless such customers are income qualifying customers;

2. The customer under a third-party power purchase agreement shall be subject to the interconnection and other requirements imposed on eligible customer-generators pursuant to subsection C of § 56-594, including the requirement that the customer bear the reasonable costs, as determined by the Commission, of the items described in clauses (a), (b), and (c) of subsection C of § 56-594;

3. A third-party power purchase agreement shall not be valid unless it conforms in all respects to the requirements of this section; and

4. An affiliate of an electric utility shall be permitted to offer and enter into third-party power purchase agreements on the same basis as may any other person that satisfies the requirements of being a seller under a third-party power purchase agreement.

C. Except as necessary to ensure compliance with the provisions of this section and the provisions of § 56-594 if the renewable energy facility is operated by an eligible customer-generator under a net energy metering program, the Commission shall not have jurisdiction to regulate the terms and conditions of a third-party power purchase agreement.

D. Nothing in this section shall be construed as (i) rendering any person, by virtue of its selling electric power to a customer under a third-party power purchase agreement entered into pursuant to this section, a public utility or a competitive service provider; (ii) imposing a requirement that such a person meet 100 percent of the load requirements for each retail customer account it serves; or (iii) affecting third-party power purchase agreements in effect prior to July 1, 2020.

E. The Commission may adopt such rules or establish such guidelines as may be necessary for its general administration of this section.

F. The provisions of this section shall apply only to the sale of electricity in the certificated service territories of investor-owned utilities.

§ 67-102. Commonwealth Energy Policy.

A. To achieve the objectives enumerated in § 67-101, it shall be the policy of the Commonwealth to:

1. Support research and development of, and promote the use of, renewable energy sources;

2. Ensure that the combination of energy supplies and energy-saving systems are sufficient to support the demands of economic growth;

3. Promote research and development of clean coal technologies, including but not limited to integrated gasification combined cycle systems;

4. Promote cost-effective conservation of energy and fuel supplies;

5. Ensure the availability of affordable natural gas throughout the Commonwealth by expanding Virginia's natural gas distribution and transmission pipeline infrastructure; developing coalbed methane gas resources and methane hydrate resources; encouraging the productive use of landfill gas; and siting one or more liquefied natural gas terminals;

6. Promote the generation of electricity through technologies that do not contribute to greenhouse gases and global warming;

7. Facilitate the development of new, and the expansion of existing, petroleum refining facilities within the Commonwealth;

8. Promote the use of motor vehicles that utilize alternate fuels and are highly energy efficient;

9. Support efforts to reduce the demand for imported petroleum by developing alternative technologies, including but not limited to the production of synthetic and hydrogen-based fuels, and the infrastructure required for the widespread implementation of such technologies;

10. Promote the sustainable production and use of biofuels produced from silvicultural and agricultural crops grown in the Commonwealth, and support the delivery infrastructure needed for statewide distribution to consumers;

11. Ensure that development of new, or expansion of existing, energy resources or facilities does not have a disproportionate adverse impact on economically disadvantaged or minority communities; ~~and~~

12. Ensure that energy generation and delivery systems that may be approved for development in the Commonwealth, including liquefied natural gas and related delivery and storage systems, should be located so as to minimize impacts to pristine natural areas and other significant onshore natural resources, and as near to compatible development as possible*; and*

13. Support the distributed generation of renewable electricity by:

a. Encouraging private sector investments in distributed renewable energy;

b. Increasing the security of the electricity grid by supporting distributed renewable energy projects with the potential to supply electric energy to critical facilities during a widespread power outage; and

c. Augmenting the exercise of private property rights by landowners desiring to generate their own energy from renewable energy sources on their lands.

B. The elements of the policy set forth in subsection A shall be referred to collectively in this title as the Commonwealth Energy Policy.

C. All agencies and political subdivisions of the Commonwealth, in taking discretionary action with regard to energy issues, shall recognize the elements of the Commonwealth Energy Policy and where appropriate, shall act in a manner consistent therewith.

D. The Commonwealth Energy Policy is intended to provide guidance to the agencies and political subdivisions of the Commonwealth in taking discretionary action with regard to energy issues, and shall not be construed to amend, repeal, or override any contrary provision of applicable law. The failure or

refusal of any person to recognize the elements of the Commonwealth Energy Policy, to act in a manner consistent with the Commonwealth Energy Policy, or to take any other action whatsoever, shall not create any right, action, or cause of action or provide standing for any person to challenge the action of the Commonwealth or any of its agencies or political subdivisions.

2. That Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017, are repealed.

3. That the repeal of Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017, shall not affect the validity of any third-party power purchase agreement entered into prior to July 1, 2020, under a pilot project authorized pursuant to Chapters 358 and 382 of the Acts of Assembly of 2013.

4. That when the rated generating capacity owned and operated by eligible customer-generators, eligible agricultural customer-generators, and small agricultural generators in the Commonwealth reaches 60 percent of the net metering systemwide cap provided for in § 56-594 of the Code of Virginia, as amended by this act, or the year 2025 for a Phase II Utility or the year 2024 for a Phase I Utility, whichever occurs first, the State Corporation Commission (the Commission) shall conduct a study proceeding to address (i) the appropriate rate structure for net metering customers; (ii) what net metering customers should pay to be connected to the grid; (iii) what net metering customers should pay for energy, infrastructure, and services the utility provides to the net metering customers; and (iv) what the utility should pay the net metering customers for energy that a net metering customer places on the grid. Notwithstanding the results of the solar study proceeding undertaken by the Commission, (a) for net metering customers with existing power purchase agreements entered into with a Phase I Utility or Phase II Utility before the entry of the final order of such proceeding, such power purchase agreement shall obligate the supplier to purchase excess electricity at the full retail rate, notwithstanding any rate that is provided for such purchases in a net metering standard contract or tariff approved by the Commission, unless the parties agree to a higher rate, and (b) the power purchase agreement entered into between a supplier and an income qualifying customer, as that term is defined in § 56-594 of the Code of Virginia, as amended by this act, shall obligate the supplier to purchase excess electricity at the full retail rate, notwithstanding the date of such customer's initial participation and notwithstanding any rate that is provided for such purchases in a net metering standard contract or tariff approved by the Commission, unless the parties agree to a higher rate.