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HOUSE BILL NO. 2438**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Corporations, Insurance and Banking
on February 6, 1999)

(Patron Prior to Substitute—Delegate Bennett)

A *BILL* to amend the Code of Virginia by adding in Title 56 a chapter numbered 9.1, containing articles numbered 1 and 2, consisting of sections numbered 56-231.15 through 56-231.37 and 56-238.38 through 56-231.52 respectively, and to repeal Chapter 9 (§§ 56-209 through 56-231.14) of Title 56 of the Code of Virginia, relating to the Utility Cooperatives Restructuring and Consumer Protection Act of 1999.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 56 a chapter numbered 9.1, containing articles numbered 1 and 2, consisting of sections numbered 56-231.15 through 56-231.37 and 56-238.38 through 56-231.52 respectively, as follows:

CHAPTER 9.1.**UTILITY CONSUMER SERVICES COOPERATIVES AND UTILITY AGGREGATION COOPERATIVES.****Article 1.****Utility Consumer Services Cooperatives Act.****§ 56-231.15. Definitions.**

The following terms, whenever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:

"Acquire" shall mean and include construct, or acquire by purchase, lease, devise, gift or the exercise of the power of eminent domain, or by other mode of acquisition.

"Affiliate" shall mean a separate affiliated or subsidiary corporation or other separate legal entity.

"Board" shall mean the board of directors of a cooperative formed under or subject to this article.

"Commission" shall mean the State Corporation Commission of Virginia.

"Cooperative" shall mean a utility consumer services cooperative formed under or subject to this article or a distribution cooperative formed under the former Distribution Cooperatives Act (§ 56-209 et seq.).

"Energy" shall mean and include any and all forms of energy no matter how or where generated or produced.

"Federal agency" shall mean and include the United States of America, the President of the United States of America, the Tennessee Valley Authority, the Federal Administrator of the Rural Utility Service, the Southeastern Power Administration, the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Federal Communications Commission and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

"HVACR" shall mean heating, ventilation, air conditioning and refrigeration.

"Improve" shall mean and include construct, reconstruct, replace, extend, enlarge, alter, better or repair.

"Law" shall mean any act or statute, general, special or local, of this Commonwealth.

"Member" shall mean and include each natural person signing the articles of incorporation of a cooperative and each person admitted to membership therein pursuant to law or its bylaws.

"Municipality" shall mean any city or incorporated town of the Commonwealth.

"Obligations" shall mean and include bonds, interim certificates or receipts, notes, debentures, and all other evidences of indebtedness either issued by, or the payment of which is assumed or contractually undertaken by, a cooperative.

"Patronage capital" shall include all amounts received by a distribution cooperative from sale of electric power to members in excess of the distribution cooperative's cost of furnishing electric power to members.

"Person" shall mean and include natural persons, firms, associations, cooperatives, corporations, limited liability companies, business trusts, partnerships, limited liability partnerships and bodies politic.

"Propane or fuel oil equipment" shall mean equipment and related systems to store or use propane or fuel oil products.

"Regulated utility services" shall mean utility services that are subject to regulation as to rates or service by the Commission.

"System" shall mean and include any plant, works, system, facilities, equipment or properties, or any part or parts thereof, together with all appurtenances thereto, used or useful in connection with the generation, production, transmission or distribution of energy or in connection with other utility

60 services.

61 "Utility services" shall mean any products, services and equipment related to energy,
62 telecommunications, water and sewerage.

63 § 56-231.16. Organization; purpose.

64 Any number of natural persons not less than five may, by executing, filing and recording articles of
65 incorporation as hereinafter set forth, form a cooperative, either with or without capital stock, not
66 organized for pecuniary profit, for the principal purpose of making energy, energy services, and other
67 utility services available at the lowest cost consistent with sound economy and prudent management of
68 the business of such cooperative and such other purposes as its membership shall approve: (i) provided,
69 however, that within its certificated service territory, no such cooperative shall, prior to July 1, 2000,
70 undertake or initiate any new program (a) to buy or maintain an inventory of HVACR equipment or
71 household appliances, (b) to install or service any such equipment or household appliances for
72 customers, unless such service is not provided by the cooperative but by a third party individual, firm or
73 corporation licensed to perform such service, (c) to sell HVACR equipment or household appliances to
74 customers metered and billed on residential rates, (d) to sell HVACR equipment to customers other than
75 those metered and billed on residential rates except where such sale is an incidental part of providing
76 other energy services or providing traditional cooperative activities, (e) to sell or distribute propane or
77 fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of
78 propane or fuel oil equipment for resale, or (f) to serve as a coordinator of nonelectric energy services
79 or provide engineering consulting services except when such energy or engineering services are an
80 incidental part of a marketing effort to provide other energy or engineering services or as a part of
81 providing services that are traditional cooperative activities; (ii) provided further, that notwithstanding
82 clause (i), such cooperative may engage within its certificated service territory in any of the activities
83 enumerated in clause (i) that (a) have received State Corporation Commission approval prior to
84 February 1, 1998, (b) such cooperative is ordered or required to undertake by any jurisdictional court
85 or regulatory authority, (c) were lawfully undertaken prior to February 1, 1998, (d) are specifically
86 permitted by statute, or (e) are undertaken by any other regulated public service company or its
87 unregulated affiliate within such cooperative's certificated service territory; and (iii) also provided that
88 such cooperative or its affiliate may not undertake such activities as are prohibited by clause (i) within
89 the certificated service territory of another public service company unless such activities are undertaken
90 by such public service company or its unregulated affiliate within such cooperative's certificated service
91 territory. In addition, such cooperative may establish one or more subsidiaries to engage in any other
92 business activities not prohibited by law; notwithstanding the foregoing, no such subsidiary may engage
93 in any business activities that the cooperatives are prohibited from engaging in under this section.

94 § 56-231.17. Articles of incorporation.

95 A. The articles of incorporation mentioned in § 56-231.16 shall be entitled and endorsed "Articles of
96 Incorporation of the Electric Cooperative" or "Articles of Incorporation of the Utility
97 Consumer Services Cooperative" (the blank space being filled in with the distinguishing part of the
98 name of the cooperative) and shall state:

99 1. The name of the cooperative, which name need not contain the word "corporation" or
100 "incorporated" but shall be such as to distinguish it from any other cooperative.

101 2. To the extent it conducts regulated electric distribution operations, a reasonable designation of the
102 territory in which such operations are principally to be conducted.

103 3. The location of its principal office and post-office address thereof.

104 4. The maximum number of directors, which shall be not less than five.

105 5. The names and post-office addresses of the directors who are to manage the affairs of the
106 cooperative for the first year of its existence, or until their successors are chosen.

107 6. The period, if any, limited for the duration of the cooperative.

108 7. The terms and conditions upon which persons shall be admitted to membership in the cooperative,
109 and in the case of a cooperative incorporating with capital stock, a statement of the maximum and
110 minimum amount of the capital stock of the cooperative and its division into shares.

111 8. In the case of a cooperative incorporating on or after July 1, 1999, the registered office and
112 registered agent of the cooperative.

113 B. The articles of incorporation may also contain any provision not inconsistent with law or the
114 provisions of Chapters 9 (§ 13.1-601 et seq.) and 10 (§ 13.1-801 et seq.) of Title 13.1 which the
115 incorporators may choose to insert for the regulation of the business and the conduct of the affairs of
116 the cooperative; and any provision as to the plan of financial organization, or relating to the internal
117 regulation or government of the cooperative, its directors and members; provided, however, that
118 subsections D through G of § 13.1-620 and subdivision 1 of § 13.1-825 shall not apply to any affiliate
119 or subsidiary of a cooperative.

120 § 56-231.18. Name of other corporations not to include term "electric cooperative" or "utility
121 consumer services cooperative."

The words "electric cooperative" or "utility consumer services cooperative" shall not be used in the corporate name of corporations other than (i) those formed pursuant to the provisions of this chapter, (ii) nonstock corporations of which cooperatives are members, and (iii) corporations, all of the stock of which is owned by cooperatives.

§ 56-231.19. Filing articles of incorporation; effect thereof; other provisions of law applicable.

The natural persons executing the articles of incorporation shall be residents of the territory in which the principal operations of the cooperative are to be conducted who intend to use utility services to be furnished by the cooperative. The articles of incorporation shall be subscribed by at least five such persons and acknowledged by them before an officer authorized by the law of this Commonwealth to take and certify acknowledgments of deeds and conveyances. When so acknowledged the articles shall be filed in accordance with the provisions of Article 3 (§ 13.1-618 et seq.) of Chapter 9 or Article 3 (§ 13.1-818 et seq.) of Chapter 10 of Title 13.1. When so filed the articles of incorporation, or certified copies thereof, shall be received in all the courts of this Commonwealth and elsewhere as prima facie evidence of the facts contained therein, and of the due incorporation of such cooperative. All of the provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.), and the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), insofar as not inconsistent with this article are hereby made applicable to such stock and nonstock cooperatives, respectively; provided, however, that subsections D through G of § 13.1-620 and subdivision 1 of § 13.1-825 shall not apply to any affiliate or subsidiary of a cooperative. When the charter is filed in the office of the State Corporation Commission, the proposed cooperative described therein, under its designated name, shall be and constitute a body corporate, and, with respect to its providing regulated utility services, with all of the applicable powers provided for in § 56-49. A cooperative formed prior to July 1, 1999, need not have a registered office or registered agent. A stock or nonstock cooperative formed thereafter shall comply with § 13.1-634 or § 13.1-833, respectively.

§ 56-231.20. Consolidation of cooperatives.

Any two or more cooperatives may enter into an agreement for the consolidation of such cooperatives. Such agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated cooperative, the number of its directors, not less than five, the time of the annual meeting and election and the names of at least five persons to be directors until the first annual meeting. If such agreement is approved by the votes of a majority of the members of each cooperative after due notice as prescribed in Title 13.1, the directors named in the agreement shall subscribe and acknowledge articles conforming substantially to the original articles, except that it shall be entitled and endorsed "Articles of Consolidation of" (the blank space being filled in with the names of the cooperatives being consolidated) and shall state:

1. The names of the cooperatives being consolidated.
2. The name of the consolidated cooperative.
3. The other items required to be stated in original articles of incorporation, and, to the extent desired, other items permitted to be so stated.

Such articles of consolidation and a certified copy or copies thereof shall be filed along with a fee of twenty-five dollars in the office of the Clerk of the Commission. Thereupon the proposed consolidated cooperative, under its designated name, shall be and constitute a body corporate with all the powers of a cooperative originally formed. Chapter 5 (§ 56-88 et seq.) of this title shall apply to such a transfer to the same extent that it applies to similar transfers of electric utilities not organized under or governed by this chapter.

§ 56-231.21. Dissolution and termination of cooperatives.

A stock or nonstock cooperative may be dissolved in the manner prescribed by Article 16 (§ 13.1-742 et seq.) of Chapter 9 or Article 13 (§ 13.1-902 et seq.) of Chapter 10 of Title 13.1, respectively.

§ 56-231.22. Charter amendments.

A cooperative may amend its articles of incorporation to change its corporate name, to increase or reduce the number of its directors or change any other provision therein; however, no cooperative shall amend its articles of incorporation to embody therein any purpose, power or provision which would not be authorized if original articles including such additional or changed purpose, power or provision were offered for filing at the time articles under this section are offered. Such amendment may be accomplished in the method prescribed in Chapters 9 (§ 13.1-601 et seq.) and 10 (§ 13.1-801 et seq.) of Title 13.1.

§ 56-231.23. General powers granted.

Each cooperative formed under this article shall have power to do any and all lawful acts or things including, but not limited to the power:

1. To produce, generate, gather, store, transport, transmit, distribute, buy and sell energy and energy-related products.
2. To sue and be sued.

3. To have a seal and alter the same at pleasure.

4. To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay therefor in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

5. To render service and to acquire, own, operate, maintain and improve a system or systems.

6. To accept gifts or grants of money or of property, real or personal, from any person, municipality or federal agency and to accept voluntary or uncompensated services.

7. To sell, lease, mortgage or otherwise encumber or dispose of all or any parts of its property, as hereinafter provided.

8. To contract debts, borrow money and to issue or assume the payment of bonds, and other obligations.

9. To fix, maintain and collect reasonable fees, rents, tolls and other charges for service rendered.

10. To exercise, with respect to its providing regulated utility service, all the powers set forth in § 56-49, including the power of eminent domain as prescribed for other public service corporations by general law.

11. To assist its members and nonmember customers, by loans or otherwise, in the acquisition by them of such installation and wiring, and the obtaining of such machinery, equipment and appliances, as will enable them to secure the greatest benefit from the use of utility services supplied by the cooperative.

12. To issue nonassessable nonvoting common and preferred capital stock and pay noncumulative dividends thereon.

13. To become a member or stockholder in one or more other cooperatives or corporations created to engage in any business not prohibited by law, including, but not limited to, other types of public service company business.

14. To perform any and all of the foregoing acts and do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person, federal agency or municipality.

§ 56-231.24. Power to dispose of property.

No cooperative may sell, lease or dispose of any of its property (other than property which, in the judgment of the board, is neither necessary nor useful in operating and maintaining the cooperative's system and which in any one year shall not exceed ten percent in value of the value of all the property of the cooperative, or merchandise), unless authorized so to do by the votes of at least a two-thirds majority of its members; however, a cooperative (i) may mortgage, finance (including, without limitation, pursuant to a sale and leaseback or lease and leaseback transaction), or otherwise encumber its assets by a vote of at least two-thirds of its board of directors; (ii) may sell or transfer its assets to another cooperative upon the vote of a majority of its members at any regular or special meeting if the notice of such meeting contains a copy of the terms of the proposed sale or transfer; or (iii) may sell or transfer distribution system facilities to a city or town at any time following the annexation of additional territory pursuant to § 56-265.4:2 by a vote of at least two-thirds of its board of directors.

§ 56-231.25. Power to issue obligations.

A cooperative shall have power and is hereby authorized, from time to time, to issue its obligations in anticipation of its revenues for any corporate purpose. Such obligations may be authorized by resolution of the board, and may bear such date or dates, mature at such time or times, not exceeding fifty years from their respective date, bear such interest, be payable at such times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, as such resolution may provide. Such obligations may be sold in such manner and upon such terms as the board may determine. Pending the preparation or execution of definitive bonds, or obligations, interim receipts or certificates of temporary bonds may be delivered to the purchaser of such obligations.

§ 56-231.26. Covenants in connection with obligations.

In connection with the issuance of any obligations a cooperative may make covenants or agreements and do any and all acts or things that a corporation can make or do under the laws of this Commonwealth.

§ 56-231.27. Power to purchase its own obligations.

A cooperative shall have power out of any funds available therefor to purchase any obligation issued by it at a price not exceeding the principal amount thereof and accrued interest thereon. All bonds so purchased shall be canceled.

§ 56-231.28. Board of directors of cooperatives.

Each cooperative shall have a board of directors of five or more members, which board shall constitute the governing body of the cooperative. The directors, other than those named in the articles of incorporation, shall be elected annually by the members entitled to vote, unless the bylaws provide that,

in lieu of electing the whole number of directors annually, the directors shall be divided into two, three or four classes at the first or any subsequent annual meeting. If the bylaws so provide, each class shall be as nearly equal in number as possible, with the term of office of one class to expire every year. If the number of classes changes, then the board of directors shall have authority to determine how directors will be allocated among the new number of classes, provided that no director's term will exceed, without re-election, a number of years equal to the number of classes of directors. The board of directors shall have authority to fix the compensation of directors. The directors shall elect annually from their own number a president of the board or a chairman of the board; and one or more vice presidents of the board, vice chairmen of the board or both. They may also elect or appoint annually (i) a president of the cooperative, (ii) one or more vice presidents of the cooperative, (iii) a secretary, (iv) a treasurer, and (v) such other officers as the board deems necessary. No person shall hold any office unless that person is a director or employee of the cooperative. The offices of secretary and treasurer may be held by the same person.

§ 56-231.29. Powers of board of directors.

The board of directors of a cooperative shall have power to do all things necessary or incidental in conducting the business of the cooperative, including, but not limited to the power:

1. If authorized by the articles of incorporation, or by resolution of its members having voting power, to adopt and amend bylaws for the management and regulation of the affairs of the cooperative, subject, however, to the right of the members to alter or repeal such bylaws. The bylaws of a cooperative may make provisions, not inconsistent with law or its articles of incorporation, regulating the admission, suspension or expulsion of members; the transfer of membership, the fees and dues of members and the termination of membership on nonpayment of dues or otherwise; the number, times and manner of choosing, qualifications, terms of office, official designations, powers, duties and compensation of its officers and directors; defining a vacancy in the board or in any office and the manner of filling it; the number of members, not less than 2.5 percent of the total number of members, to constitute a quorum at meetings; the date of the annual meeting and the giving of notice thereof and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the cooperative is to render service to its members; the disposition of the revenues and receipts of the cooperative; and regular and special meetings of the board and the giving of notice thereof.

2. To appoint agents and employees and to fix their compensation and the compensation of the officers of the cooperative.

3. To execute all instruments.

4. To make its own rules and regulations as to its procedure.

§ 56-231.30. Rights and liabilities of members.

A cooperative shall issue to its members certificates of membership and each member shall be entitled to only one vote at the meetings of the members of the cooperative. The liability of each member shall be limited to the unpaid portion of his membership fee or subscription to capital stock, and any unpaid bills for utility services or other services, commodities or merchandise purchased from the cooperative. The equity of members of a nonstock cooperative shall be set by the board and be in proportion to the revenue or patronage capital paid to the cooperative. A cooperative shall be operated on a not-for-profit basis for the mutual benefit of the members. The bylaws of a cooperative or its contract with the members shall contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its nonprofit and cooperative character.

§ 56-231.31. Payment of certain patronage capital to spouse or next of kin of deceased person.

When there is held by any cooperative any patronage capital to the credit of a deceased person, in an amount not exceeding \$10,000, upon whose estate there shall have been no qualification, it shall be lawful for such electric cooperative, after 120 days from the death of such person, to pay such balance to his or her spouse, and if none, to his or her next of kin, whose receipt therefor shall be a full discharge and acquittance to such electric cooperative to all persons whomsoever on account of such patronage capital.

§ 56-231.32. Service to members.

No person shall become or remain a member unless such person shall use utility services supplied by such cooperative and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such cooperative. However, nothing in this article shall prevent a cooperative from engaging in other lawful activities or enterprises. Should the cooperative acquire any utility facilities already dedicated or devoted to the public use it may, for the purpose of continuing existing service and avoiding hardship, continue to serve the persons served directly from such facilities at the time of such acquisition without requiring that such persons become members. Such nonmember utility service customers shall have the right to become members upon nondiscriminatory terms. The charges for regulated utility services to such nonmembers shall be on a cost basis similar to the charges to

306 *members.*

307 *§ 56-231.33. Adequate service; rates.*

308 *Regulated utility services offered by a cooperative shall be reasonably adequate, subject to the*
309 *regulations of the State Corporation Commission, as provided in § 56-231.34. The charge made by any*
310 *such cooperative for any regulated utility service rendered or to be rendered, either directly or in*
311 *connection therewith, shall be nondiscriminatory, reasonable and just, and every discriminatory, unjust*
312 *or unreasonable charge for such regulated utility service is prohibited and declared unlawful.*
313 *Reasonable and just charges for service within the meaning of this section shall be such charges as*
314 *shall produce sufficient revenue to pay all legal and other necessary expenses incident to the operation*
315 *of the system, and shall include but not be limited to maintenance cost, operating charges, interest*
316 *charges on bonds or other obligations, to recover such stranded costs and transition costs as may be*
317 *authorized in this title, to provide for the liquidation of bonds or other evidences of indebtedness, to*
318 *provide adequate funds to be used as working capital, as well as reasonable reserves and funds for*
319 *making replacements and also for the payment of any taxes that may be assessed against such*
320 *cooperative or its property, it being the intent and purpose hereof that such charges shall produce an*
321 *income sufficient to maintain such cooperative property in a sound physical and financial condition to*
322 *render adequate and efficient service. Any rate for regulated utility services that is too low to meet the*
323 *foregoing requirements shall be unlawful.*

324 *§ 56-231.34. Regulation by Commission.*

325 *The regulated utility services of a cooperative shall be subject to the jurisdiction of the Commission*
326 *in the same manner and to the same extent as are regulated utility services provided by other persons*
327 *under the laws of this Commonwealth. All other business activities of a cooperative and its affiliates*
328 *shall be subject to the jurisdiction of the Commission to the extent provided by § 56-231.34.1 and any*
329 *other applicable laws of the Commonwealth.*

330 *§ 56-231.34:1. Separation of regulated and unregulated businesses.*

331 *A. Any business of a cooperative that is not a regulated utility service shall be conducted solely by*
332 *one or more affiliates of such cooperative. No such affiliates, formed to engage in any business that is*
333 *not a regulated utility service, shall engage in regulated utility services.*

334 *B. The Commission shall promulgate rules and regulations to promote effective and fair competition*
335 *between (i) affiliates of cooperatives that are engaged in business activities which are not regulated*
336 *utility services and (ii) other persons engaged in the same or similar businesses. The rules and*
337 *regulations shall be effective by July 1, 2000, and shall include provisions:*

338 *1. Prohibiting cost-shifting or cross-subsidies between a cooperative and its affiliates;*

339 *2. Prohibiting anti-competitive behavior or self-dealing between a cooperative and its affiliates;*

340 *3. Prohibiting a cooperative from engaging in discriminatory behavior towards nonaffiliated entities;*
341 *and*

342 *4. Establishing codes of conduct detailing permissible relations between a cooperative and its*
343 *affiliates. In establishing such codes, the Commission shall consider, among other things, whether and,*
344 *if so, under what circumstances and conditions (i) a cooperative may provide its affiliates with customer*
345 *lists or other customer information, sales leads, procurement advice, joint promotions, and access to*
346 *billing or mailing systems unless such information or services are made available to third parties under*
347 *the same terms and conditions, (ii) the cooperative's name, logos or trademarks may be used in*
348 *promotional, advertising or sales activities conducted by its affiliates, and (iii) the cooperative's vehicles,*
349 *equipment, office space and employees may be used by its affiliates.*

350 *C. Nothing in this article shall be deemed to abrogate or modify the Commission's authority under*
351 *Chapter 4 (§ 56-76 et seq.) of Title 56.*

352 *§ 56-231.34:2. Right of action; violation of rules or regulations.*

353 *A. Any person who suffers loss as the proximate result of a violation by a cooperative or its affiliate*
354 *of any rule or regulation adopted by the Commission pursuant to § 56-231.34:1 shall be entitled to*
355 *initiate an action to recover actual damages or \$500, whichever is greater, and to obtain injunctive*
356 *relief. Any action pursuant to this section shall be commenced within two years after its accrual.*

357 *B. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded,*
358 *such person may also be awarded reasonable attorney's fees and court costs.*

359 *C. In any case arising under this section, no liability shall be imposed upon any cooperative or its*
360 *affiliate which shows by a preponderance of the evidence that (i) the act or practice alleged to be in*
361 *violation of any rule or regulation adopted by the Commission pursuant to § 56-231.34:1 was an act or*
362 *practice over which the same had no control, or (ii) the alleged violation resulted from a bona fide*
363 *error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However,*
364 *nothing in this section shall prevent the court from ordering restitution and payment of reasonable*
365 *attorney's fees and court costs pursuant to subsection B to any person aggrieved as a result of an*
366 *unintentional violation.*

367 *§ 56-231.35. Charter fees, etc.*

The general laws relating to fees and other charges in connection with issuing charters, amendments thereto and dissolutions of corporations organized on a mutual basis or without capital stock shall apply to cooperatives organized under the provisions of this article.

§ 56-231.36. Construction of article; conflicting laws.

This article is to be liberally construed and the enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things, and any provisions of other laws in conflict with the provisions of this article shall not apply to cooperatives operating hereunder. Any object, purpose, power, manner, method or thing which is not specifically prohibited is permitted.

§ 56-231.37. How article cited.

This article may be cited as the "Utility Consumer Services Cooperatives Act."

Article 2.

Utility Aggregation Cooperatives Act.

§ 56-231.38. Definitions.

As used in this article:

"Affiliate shall mean a separate affiliated or subsidiary corporation or other separate legal entity.

"Board" shall mean any board of directors of a cooperative formed under or which becomes subject to this article.

"Commission" shall mean the State Corporation Commission of Virginia.

"Cooperative" shall mean a power supply cooperative formed under the former Power Supply Cooperatives Act (§ 56-231.1 et seq.) or a utility aggregation cooperative formed under this article or which becomes subject to this article.

"Energy" shall mean and include all energy, regardless of how or where it is generated or produced.

"HVACR" shall mean heating, ventilation, air conditioning and refrigeration.

"Member" means any person that holds any class of membership in a cooperative.

"Obligations" shall mean all evidences of indebtedness issued by or the payment of which is assumed by a cooperative.

"Patronage capital" shall include all amounts received by a cooperative from the sale of electric power to members in excess of the cooperative's cost of furnishing electric power to members.

"Person" shall mean and include natural persons, firms, associations, cooperatives, corporations, limited liability companies, business trusts, partnerships, limited liability partnerships and bodies politic.

"Propane or fuel oil equipment" shall mean equipment and related systems to store or use propane or fuel oil products.

"Regulated utility services" shall mean utility services that are subject to regulation as to rates or service by the Commission.

"System" shall mean any plant, works, facility, or property used or useful in connection with the purchase, generation, sale or transmission of energy, utility products and services, or both.

"Utility services" shall mean any products, services, and equipment related to energy, telecommunications, water and sewerage.

§ 56-231.39. Organization and purpose.

Any utility consumer service cooperative or utility aggregation cooperative may form a cooperative in accordance with this article, either stock or nonstock, not for pecuniary profit for the purpose of purchasing, generating or transmitting energy products and services for sale or resale, operating or participating in an independent system operator, regional transmission entity, regional power exchange, or both, and any other lawful purpose, consistent with sound business principles and prudent management practices; (i) provided, however, that within the certificated service territory of any member distribution cooperative that existed as of January 1, 1999, no such cooperative shall, prior to July 1, 2000, undertake or initiate any new program (a) to buy or maintain an inventory of HVACR equipment or household appliances, (b) to install or service any such equipment or household appliances for customers, unless such service is not provided by the cooperative but by a third party individual, firm or corporation licensed to perform such service, (c) to sell HVACR equipment or household appliances to customers who are metered and billed on residential rates, (d) to sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing traditional cooperative activities, (e) to sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment for resale, or (f) to serve as a coordinator of nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are traditional cooperative activities; (ii) provided further, that notwithstanding clause (i), such cooperative may, within the certificated service territory of a specific distribution cooperative as of January 1, 1999, and then only to the extent that such specific distribution

cooperative could lawfully do so, engage in any of the activities enumerated in clause (i) that (a) have received State Corporation Commission approval prior to February 1, 1998, (b) such cooperative is ordered or required to undertake by any jurisdictional court or regulatory authority, (c) were lawfully undertaken prior to February 1, 1998, (d) are specifically permitted by statute, or (e) are undertaken by any other regulated public service company or its unregulated affiliate within such distribution cooperatives' certificated service territory; and (iii) also provided that such cooperative or its affiliate may not undertake such activities as are prohibited by clause (i) within the certificated service territory of another public service company unless such activities are undertaken by such public service company or its unregulated affiliate within the certificated service territory of a specific distribution cooperative existing as of January 1, 1999, and the certificated service territories of the public service company and the specific distribution cooperative overlap. In addition, such cooperative may establish one or more subsidiaries to engage in any other business activities not prohibited by law. Notwithstanding the foregoing, no such subsidiary may engage in any business activities that the cooperatives are prohibited from engaging in under this section.

§ 56-231.40. Names.

The words "electric cooperative" or "utility aggregation cooperative" shall not be used in the corporate name of any corporation other than those formed under or subject to this chapter, or their wholly-owned subsidiaries.

§ 56-231.41. Articles of incorporation.

A. The articles of incorporation shall be entitled "Articles of Incorporation of Cooperative" (the blank space being filled in with the distinguishing part of the name of the cooperative) and shall state:

1. The name of the cooperative, which name need not contain the word "corporation" or "incorporated," but shall be such as to distinguish it from any other cooperative;

2. The location and post office address of its principal office and its registered agent;

3. The number of directors;

4. The names and post office addresses of the directors who are to manage the affairs of the cooperative for the first year of its existence, or until their successors are chosen;

5. The duration of the cooperative if its duration is to be limited; and

6. In the case of a cooperative incorporating with capital stock, a statement of the maximum and minimum amount of the capital stock of the cooperative, and its division into shares.

B. The articles of incorporation may also contain any provision not inconsistent with law or the provisions of Title 13.1, which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the cooperative; and any provision as to the plan of financial organization, or relating to the internal regulation or the government of the cooperative, its directors and members; provided, however, that subsections D through G of § 13.1-620 and subdivision 1 of § 13.1-825 shall not apply to any affiliate or subsidiary of a cooperative.

§ 56-231.42. Bylaws.

The original bylaws of a cooperative shall be adopted by the members of such cooperative. Thereafter, such cooperative's board shall adopt, amend, or repeal the bylaws unless otherwise provided in the articles of incorporation or bylaws, subject to the rights of the members to alter or repeal such bylaws. The bylaws shall set forth the rights and duties of directors, officers and members and other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this article, the cooperative's articles of incorporation or other applicable law. The bylaws shall contain provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain the cooperative's nonprofit character.

§ 56-231.43. Powers.

A. Each cooperative formed under this article shall have power to do any and all lawful acts or things, including, but not limited to the power:

1. To purchase, sell, generate, store, transport or transmit energy, energy services, products and equipment.

2. To sue and be sued.

3. To have a seal and alter the same at pleasure.

4. To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

5. To render service and to acquire, own, operate, maintain and improve a system or systems.

6. To accept gifts or grants of money or of property, real or personal, and to accept voluntary and uncompensated services.

7. To sell, lease, mortgage or otherwise encumber or dispose of all or any parts of its property.

8. To contract debts, borrow money and to issue or assume the payment of bonds and other obligations.

- 491 9. To fix, maintain and collect reasonable fees, rents, tolls and other charges for service rendered.
- 492 10. To exercise, with respect to its construction of regulated transmission facilities as a power supply
- 493 cooperative, all the powers set forth in § 56-49, including the power of eminent domain as prescribed
- 494 for other public service corporations by general law.
- 495 11. To assist its members, by loans or otherwise, in the acquisition by them of energy and electrical,
- 496 technological and other equipment related to the business of the cooperative.
- 497 12. To issue nonassessable nonvoting common and preferred capital stock and pay noncumulative
- 498 dividends thereon.
- 499 13. To perform any and all of the foregoing acts through or by means of its own officers, agents and
- 500 employees, or by contract.
- 501 B. A cooperative shall have the power and is authorized, from time to time, to issue its obligations in
- 502 anticipation of its revenues for any corporate purpose.
- 503 1. The obligations may be authorized by resolution of the board, and may bear any date or dates,
- 504 mature at any time or times, bear any interest, be payable at any times, be in any denominations, be in
- 505 any form, either coupon or registered, carry any registration privileges, be executed in any manner, be
- 506 payable in any medium of payment, at any place or places, and be subject to any terms of redemption,
- 507 as provided by the resolution.
- 508 2. These obligations may be sold in the manner and upon the terms as the board may determine.
- 509 Pending the preparation or execution of definitive bonds or obligations, interim receipts or certificates
- 510 of temporary bonds may be delivered to the purchaser of such obligations.
- 511 C. A cooperative shall have the power, out of any funds available, to purchase any of its own
- 512 obligations. All obligations so purchased shall be canceled.
- 513 D. The Virginia Securities Act (§ 13.1-501 et seq.) shall not apply to membership certificates issued
- 514 by a cooperative or its cooperative affiliates, or subsidiaries organized prior to January 1, 1999.
- 515 § 56-231.44. Board of directors.
- 516 A. Each cooperative shall have a board of directors consisting of at least five directors, which shall
- 517 constitute the governing body of such cooperative. The board, other than those named in the articles of
- 518 incorporation, shall be elected annually by the members. The bylaws may provide in lieu of electing the
- 519 whole number of directors annually, that the directors may be divided into classes and that the terms of
- 520 office of the several classes need not be uniform. Each director shall hold office for the term for which
- 521 he or she is elected and until his or her successor is elected except in cases of ex officio directors.
- 522 The directors shall be elected by the members of the cooperative. At a minimum, there shall be at
- 523 least one director elected from the membership, officers, directors or employees of each member of the
- 524 cooperative. Additional directors may be elected from the membership, officers, directors or employees
- 525 of any member of the cooperative, or from employees of the cooperative. The board of directors shall
- 526 have the authority to fix the compensation of the directors.
- 527 B. The board of directors of a cooperative shall have the power to do all things necessary or
- 528 incidental in conducting the business of such cooperative, including, but not limited to the power:
- 529 1. To adopt and amend bylaws for the management and regulation of the affairs of such cooperative
- 530 unless otherwise provided in the articles of incorporation or bylaws, subject to the rights of the
- 531 members to alter or repeal such bylaws. The bylaws of a cooperative may make provisions not
- 532 inconsistent with law or its articles of incorporation, regulating:
- 533 a. The admission, suspension or expulsion of members;
- 534 b. The transfer or classification of membership;
- 535 c. The fees and dues of members and the termination of membership on nonpayment of dues;
- 536 d. The number, times and manner of choosing or electing, qualifications, terms of office, official
- 537 designations, powers, duties and compensation of its directors and officers;
- 538 e. The filling of a vacancy in the board or in any office;
- 539 f. The number of board members or member-delegates constituting a quorum at meetings;
- 540 g. The date of the annual meeting and the giving of notice thereof and the holding of special
- 541 meetings and the giving of notice thereof;
- 542 h. The terms and conditions upon which such cooperative is to render service to its members;
- 543 i. The disposition of capital contributions; and
- 544 j. The establishment of classes of membership, the qualifications therefor and the rights and
- 545 obligations thereof.
- 546 2. To appoint agents and employees and to fix their compensation and the compensation of the
- 547 officers of the cooperative.
- 548 3. To execute all instruments.
- 549 4. To make its own rules and regulations as to its procedure.
- 550 § 56-231.45. Officers.
- 551 The officers of a cooperative shall consist of a president, vice president, secretary and treasurer who

552 shall be elected annually by the board and such other officers as may be designated by the board of
553 directors. No person shall hold any offices unless that person is a director or employee of the
554 cooperative. The offices of secretary and treasurer may be held by the same person. Any officer may be
555 removed from office and a successor elected or appointed in accordance with such cooperative's bylaws.

556 § 56-231.46. Members.

557 A. A cooperative may have one or more classes of members. If the cooperative has more than one
558 class of members, the designation of each class and the qualifications and rights of the members of each
559 class shall be set forth in the bylaws of the cooperative.

560 B. Such cooperative shall issue to its members nontransferable certificates of membership. Members
561 shall be entitled to vote in accordance with the articles of incorporation or, if the articles of
562 incorporation so provide, the bylaws. The liability of each member shall be limited to the unpaid portion
563 of its membership fee or subscription to capital stock and its contractual obligations to the cooperative.
564 The equity of members of a nonstock cooperative shall be in proportion to the patronage capital paid
565 such cooperative.

566 C. No person shall become or remain a member unless it has complied with the terms and conditions
567 of membership contained in the bylaws of the cooperative.

568 § 56-231.47. Adoption of article.

569 Any cooperative of this Commonwealth engaged in the purchase, sale, generation or transmission of
570 electric energy products or services for sale or resale may come under the provisions of this article by
571 filing with the Commission a certificate of adoption in the manner provided by subsection (b) of
572 § 13.1-334 and relinquishing all rights and powers granted by its former charter.

573 § 56-231.48. Applicability of other laws.

574 All of the provisions of the Virginia Stock Corporation Act, Chapter 9 (§ 13.1-601 et seq.) of Title
575 13.1, and the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), insofar as not inconsistent with
576 this article, are hereby made applicable to stock and nonstock cooperatives, respectively, when the
577 articles of incorporation are filed in the office of the Commission; provided, however, that subsections D
578 through G of § 13.1-620 and subdivision 1 of § 13.1-825 shall not apply to any affiliate or subsidiary of
579 a cooperative. A cooperative must have a registered office and a registered agent, pursuant to
580 § 13.1-634 or § 13.1-833, as appropriate.

581 § 56-231.49. Restructuring costs.

582 To the extent authorized in this title, a cooperative may recover its costs related to the restructuring
583 of the electric utility industry, including stranded costs and transition costs, from its members through
584 its rates and charges.

585 § 56-231.50. Regulation by State Corporation Commission.

586 The regulated utility services and operations of any cooperative organized under this article shall be
587 subject to the jurisdiction of the Commission in the same manner and to the same extent as are all other
588 providers of such regulated utility services under the laws of this Commonwealth; but with regard to
589 sales of energy at wholesale, no cooperative shall be subject to the provisions of §§ 56-234 through
590 56-245, 56-247 and 56-249 through 56-249.6. With regard to business activities which are not regulated
591 utility services, no cooperative shall be subject to the provisions of §§ 56-234 through 56-245 and
592 56-249 through 56-249.6. All other business activities of a cooperative and its affiliates shall be subject
593 to the jurisdiction of the Commission to the extent provided by § 56-231.50:1 and any other applicable
594 laws of this Commonwealth.

595 § 56-231.50:1. Separation of regulated and unregulated businesses.

596 A. Any business of a cooperative that is not a regulated utility service shall be conducted solely by
597 one or more affiliates of such cooperative. No such affiliates, formed to engage in any business that is
598 not a regulated utility service, shall engage in regulated utility services.

599 B. The Commission shall promulgate rules and regulations to promote effective and fair competition
600 between (i) affiliates of cooperatives that are engaged in business activities which are not regulated
601 utility services and (ii) other persons engaged in the same or similar businesses. The rules and
602 regulations shall be effective by July 1, 2000, and shall include provisions:

603 1. Prohibiting cost-shifting or cross-subsidies between a cooperative and its affiliates;

604 2. Prohibiting anti-competitive behavior or self-dealing between a cooperative and its affiliates;

605 3. Prohibiting a cooperative from engaging in discriminatory behavior towards nonaffiliated entities;
606 and

607 4. Establishing codes of conduct detailing permissible relations between a cooperative and its
608 affiliates. In establishing such codes, the Commission shall consider, among other things, whether and,
609 if so, under what circumstances and conditions (i) a cooperative may provide its affiliates with customer
610 lists or other customer information, sales leads, procurement advice, joint promotions, and access to
611 billing or mailing systems unless such information or services are made available to third parties under
612 the same terms and conditions, (ii) the cooperative's name, logos or trademarks may be used in
613 promotional, advertising or sales activities conducted by its affiliates, and (iii) the cooperative's vehicles,

equipment, office space and employees may be used by its affiliates.

C. Nothing in this article shall be deemed to abrogate or modify the Commission's authority under Chapter 4 (§ 56-76 et seq.) of Title 56.

§ 56-231.50:2. Right of action; violation of rules or regulations.

A. Any person who suffers loss as the proximate result of a violation by a cooperative or its affiliate of any rule or regulation adopted by the Commission pursuant to § 56-231.50:1 shall be entitled to initiate an action to recover actual damages or \$500, whichever is greater, and to obtain injunctive relief. Any action pursuant to this section shall be commenced within two years after its accrual.

B. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person may be also be awarded reasonable attorney's fees and court costs.

C. In any case arising under this section, no liability shall be imposed upon any cooperative or its affiliate which shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of any rule or regulation adopted by the Commission pursuant to § 56-231.50:1 was an act or practice over which the same had no control, or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subsection B to any person aggrieved as a result of an unintentional violation.

§ 56-231.51. Construction of article and conflicting laws.

This article is to be liberally construed and the enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things, and any provisions of other laws in conflict with the provisions of this article shall not apply to cooperatives operating hereunder. Any object, purpose, power, manner, method or thing which is not specifically prohibited is permitted.

§ 56-231.52. Citation to article.

This article may be cited as the "Utility Aggregation Cooperatives Act."

2. That Chapter 9 (§§ 56-209 through 56-231.14) of Title 56 of the Code of Virginia is repealed.