

995243146

HOUSE BILL NO. 2722

Offered January 21, 1999

A BILL to amend and reenact §§ 58.1-2600, 58.1-2626, 58.1-2627, 58.1-2628, 58.1-2633, 58.1-2660, 58.1-2690, 58.1-3731, 58.1-3814 and 59.1-199 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-235.8, relating to gas utilities; retail supply choice; taxation; consumer protection.

Patrons—Cantor, Bryant and Robinson; Senators: Colgan and Saslaw

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2600, 58.1-2626, 58.1-2627, 58.1-2628, 58.1-2633, 58.1-2660, 58.1-2690, 58.1-3731, 58.1-3814 and 59.1-199 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 56-235.8 as follows:

§ 56-235.8. Retail supply choice for natural gas customers.

A. Notwithstanding any provision of law to the contrary, each gas utility operating in Virginia is authorized to offer retail supply choice to all of its customers by filing a plan for implementing retail supply choice with the State Corporation Commission for approval. The Commission shall accept such a plan for filing within thirty days of filing if it contains:

1. A schedule for implementing retail supply choice for all of its customers;

2. Tariff revisions, including proposed unbundled rates for firm and interruptible service (which may utilize a cost allocation and rate design formulated to recover the gas utility's non-gas fixed costs on a non-volumetric basis) and terms and conditions of service designed to provide nondiscriminatory open access over its transportation system, comparable to the transportation service provided by the gas utility to itself, to allow competitive suppliers to sell natural gas directly to the gas utility's customers;

3. A non-bypassable, competitively neutral mechanism for the gas utility to recover from its customers 100 percent of its costs prudently incurred to support its merchant obligation, including contract obligation costs and transition costs. For the purposes of this section, contract obligation costs are costs associated with acquiring, maintaining or terminating interstate pipeline capacity contracts, less revenues generated with mitigating such contract obligations, whether by off-system sales, capacity release, pipeline supplier refunds or otherwise; and transition costs are costs incurred by the gas utility associated with educating the public on retail supply choice and redesigning its facilities, operations and systems to permit retail supply choice;

4. A transportation balancing mechanism to ensure recovery of the gas costs associated with operating the gas utility's transportation system;

5. A mechanism for offering to gas suppliers and customers using the gas utility's transportation system the right of first refusal to acquire the gas utility's upstream transmission and/or storage capacity; and

6. A code of conduct governing the activities and relationships between the gas utility and gas suppliers to prevent anti-competitive or discriminatory conduct and the unlawful exercise of market power.

B. The Commission shall approve the plan unless it determines, after notice and an opportunity for public hearing, that the plan would:

1. Adversely affect the safety or reliability of natural gas service by the gas utility or the provision of adequate service to the gas utility's customers;

2. Adversely affect the gas utility's customers not participating in the plan;

3. Unreasonably discriminate against one class of the gas utility's customers in favor of another class (provided, however, that a gas utility's recovery of non-gas fixed costs on a non-volumetric basis shall not constitute unreasonable discrimination); or

4. Produce a rate of return for the gas utility in excess of authorized levels.

C. Once a plan becomes effective pursuant to this section, if the Commission determines, after notice and opportunity for hearing, that the plan is having, or is reasonably likely to have, the effects set forth in subdivision 1, 2 or 3, it may order revisions to the plan to remove such effects. Any such revisions to the plan will operate prospectively only.

D. No person, other than a public service corporation, shall engage in the business of selling natural gas to the customers of a gas utility that has an approved plan implementing retail supply choice unless such person (for the purpose of this section, "gas supplier") holds a license issued by the Commission. An application for a gas supplier license must be made to the Commission in writing, be verified by

INTRODUCED

HB2722

60 *oath or affirmation and be in such form and contain such information as the Commission may, by rule*
61 *or regulation, require. For purposes of this subsection, the Commission may require a gas supplier to*
62 *demonstrate that it has the means to provide natural gas during peak periods. A gas supplier license*
63 *shall be issued to any qualified applicant within forty-five days of the date of filing such application,*
64 *authorizing in whole or in part the service covered by the application. A person holding such a license*
65 *shall not be considered a "public service corporation," "public service company" or a "public utility"*
66 *and shall not be subject to regulation as such. No license issued under this chapter shall be transferred*
67 *without prior Commission approval as being not inconsistent with the public interest. If the Commission*
68 *determines, after notice and opportunity for public hearing, that a gas supplier has failed to comply*
69 *with the provisions of this section or the Commission's rules, regulations or orders, the Commission may*
70 *suspend or revoke the gas supplier's license*

71 *E. The Commission shall establish rules and regulations for the implementation of this section,*
72 *provided that:*

73 *1. The Commission's rules and regulations shall not govern the rates charged by licensed gas*
74 *suppliers; and*

75 *2. The Commission's rules and regulations shall permit an affiliate of the gas utility to be licensed as*
76 *a gas supplier and to participate in the gas utility's retail supply access program under the same terms*
77 *and conditions as gas suppliers not affiliated with the gas utility.*

78 *§ 58.1-2626. Annual state license tax on companies furnishing water, heat, light or power.*

79 *A. Every corporation doing in the Commonwealth the business of furnishing water, heat, light or*
80 *power, whether by means of electricity, gas or steam, except a pipeline transmission company taxed*
81 *pursuant to § 58.1-2627.1 or a gas supplier as defined in subsection D of § 56-235.8, shall, for the*
82 *privilege of doing business within the Commonwealth, pay to the Commonwealth for each tax year an*
83 *annual license tax equal to one and one-eighth percent its gross receipts, actually received, from all*
84 *sources up to \$100,000 of such gross receipts and two and three-tenths percent of all such gross receipts*
85 *in excess of \$100,000. For the tax year 1989 and thereafter the license tax shall be an amount equal to*
86 *two percent.*

87 *B. The state license tax provided in subsection A shall be (i) in lieu of all other state license or*
88 *franchise taxes on such corporation, and (ii) in lieu of any tax upon the shares of stock issued by it.*

89 *C. Nothing herein contained shall exempt such corporation from motor vehicle license taxes, motor*
90 *vehicle fuel taxes, fees required by § 13.1-775.1 or from assessments for street and other local*
91 *improvements, which shall be authorized by law, nor from the county, city, town, district or road levies.*

92 *D. Nothing herein contained shall annul or interfere with any contract or agreement by ordinance*
93 *between such corporations and cities and towns as to compensation for the use of the streets or alleys*
94 *by such corporations.*

95 *§ 58.1-2627. Exemptions.*

96 *A. There shall be excluded from the gross receipts of any corporation engaged in the business of*
97 *furnishing heat, light and power by means of electricity, receipts from interstate business.*

98 *B. There shall be deducted from the gross receipts of any power supply cooperative, defined in*
99 *§ 56-231.1, which purchases electricity for the sole purpose of resale to other cooperatives, the amount*
100 *paid in such taxable period by such cooperative to purchase electricity from a vendor of electricity*
101 *which is subject to the tax imposed by this chapter.*

102 *C. There shall be deducted from the gross receipts of any electric cooperative, as defined in*
103 *§ 56-209, which is engaged in sales to ultimate consumers, and every corporation engaged in the*
104 *business of furnishing heat, light and power by means of electricity the amount so paid in such taxable*
105 *period by such cooperative or corporation to purchase electricity from a vendor subject to the tax*
106 *imposed by this chapter.*

107 *D. Whenever the total gross receipts of any corporation engaged in the business of furnishing heat,*
108 *light or power by means of electricity or gas and subject to the tax imposed by § 58.1-2626 includes*
109 *receipts from another corporation which is a member of an affiliated group of corporations and which is*
110 *also subject to the tax imposed by § 58.1-2626, such receipts from such other corporation shall be*
111 *deducted from such total gross receipts. The term "affiliated group" shall have the meaning given in*
112 *§ 58.1-3700.1.*

113 *E. Effective for purchases on and after July 1, 1994, there shall be deducted from the gross receipts*
114 *of any electric cooperative, as defined in § 56-209, which is engaged in sales to ultimate consumers, the*
115 *amount paid in such taxable period by such cooperative to purchase, for the purpose of resale within the*
116 *Commonwealth, electricity from a federal entity which made payments during such taxable period to the*
117 *Commonwealth in lieu of taxes in accordance with a federal law requiring such payments to be*
118 *calculated on the basis of such federal entity's gross proceeds from the sale of electricity.*

119 *§ 58.1-2628. Annual report.*

120 *A. Each telegraph company and telephone company shall report annually, on April 15, to the*
121 *Commission all real and tangible personal property of every description in the Commonwealth, owned,*

operated or used by it, except leased automobiles, leased trucks or leased real estate, as of January 1 preceding, showing particularly the county, city, town or magisterial district wherein such property is located.

The report shall also show the total gross receipts for the twelve months ending December 31 next preceding and the interstate revenue, if any, attributable to the Commonwealth. Such revenue shall include all interstate revenue from business originating and terminating within the Commonwealth and a proportion of interstate revenue from all interstate business passing through, into or out of the Commonwealth.

B. Every corporation doing in the Commonwealth the business of furnishing water, heat, light and power, whether by means of electricity, gas or steam, *other than a gas supplier as defined in subsection D of § 56-235.8* shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, belonging to it as of January 1 preceding, showing particularly, as to property owned by it, the county, city, town or magisterial district wherein such property is located. The report shall also show the total gross receipts for the twelve months ending December 31 next preceding.

C. Every pipeline transmission company shall report annually, on April 15, to the Department all of its real and tangible personal property of every description as of the beginning of January 1 preceding, showing particularly in what city, town or county and magisterial district therein the property is located.

D. The report required by subsections A and B shall be completed on forms prepared and furnished by the Commission. The Commission shall include on such forms such information as the Commission deems necessary for the proper administration of this chapter.

E. The report required by this section shall be certified by the oath of the president or other designated official of the corporation.

§ 58.1-2633. Assessment by Commission.

A. The Commission shall assess the value of the property subject to local taxation of each telegraph, telephone, water, heat, light and power company, except a pipeline transmission company taxed pursuant to § 58.1-2627.1 *or a gas supplier as defined in subsection D of § 56-235.8*, and shall assess the license tax levied hereon if such company is subject to the license tax under this article.

B. Should any such taxpayer fail to make the reports required by this article on or before April 15 of each year, the Commission shall assess the value of the property of such taxpayer, and its gross receipts upon the best and most reliable information that can be obtained by the Commission.

C. In making such assessment, the Commission may require such taxpayer or its officers and employees to appear with such documents and papers as the Commission deems necessary.

§ 58.1-2660. Special revenue tax; levy.

In addition to any other taxes upon the subjects of taxation listed herein, there is hereby levied, subject to the provisions of § 58.1-2664, a special regulatory revenue tax equal to two-tenths of one percent of the gross receipts such person receives from business done within the Commonwealth upon:

1. Corporations furnishing water, heat, light or power, either by means of electricity, gas or steam, *other than gas suppliers as defined in subsection D of § 56-235.8*;

2. Telegraph companies owning and operating a telegraph line apparatus necessary to communicate by telecommunications in the Commonwealth;

3. Telephone companies whose gross receipts from business done within the Commonwealth exceed \$50,000 or a company, the majority of stock or other property of which is owned or controlled by another telephone company, whose gross receipts exceed the amount set forth herein;

4. The Virginia Pilots' Association;

5. Railroads, except those exempt by virtue of federal law from the payment of state taxes, subject to the provisions of § 58.1-2661; and

6. Common carriers of passengers by motor vehicle, except urban and suburban bus lines, a majority of whose passengers use the buses for traveling a daily distance of not more than forty miles measured one way between their place of work, school or recreation and their place of abode.

§ 58.1-2690. No state or local tax on intangible personal property or money; local levies and license taxes.

A. Except as provided in this chapter, there shall be no state or local taxes assessed on the intangible personal property, gross receipts or other such money or income owned by telephone or telegraph companies, railroads, pipeline companies, or corporations furnishing water, heat, light and power by means of electricity, gas or steam, *other than gas suppliers as defined in subsection D of § 56-235.8*.

B. On the real estate and tangible personal property of every incorporated telegraph and telephone company owning or operating telegraph or telephone lines in Virginia and of railroads, pipeline companies, or corporations furnishing water, heat, light and power by means of electricity, gas or steam, there shall be local levies at the rates prescribed by § 58.1-2606.

C. Notwithstanding the provisions of subsection A, any county, city or town may impose a license

183 tax under § 58.1-3703 upon a corporation owning or operating telegraph or telephone lines in Virginia
184 for the privilege of doing business therein, which shall not exceed one-half of one percent of the gross
185 receipts of such business accruing to such corporation from such business in such county, city or town;
186 however, charges for long distance telephone calls shall not be considered receipts of business in such
187 county, city or town.

188 D. Notwithstanding the provisions of subsection A, any county, city or town may impose an excise
189 tax under § 58.1-3818.3 upon a corporation owning or operating telegraph or telephone lines in Virginia,
190 at a rate that shall not exceed the rate lawfully imposed by § 58.1-3818.3, on such corporation's gross
191 receipts from sales of video programming or access to video programming directly to end-user
192 subscribers who are located within such county, city or town.

193 § 58.1-3731. Certain public service corporations; rate limitation.

194 Every county, city or town is hereby authorized to impose a license tax, in addition to any tax levied
195 under Chapter 26 of this title, on (i) telephone and telegraph companies, (ii) water companies and (iii)
196 heat, light and power companies, *other than gas suppliers as defined in subsection D of § 56-235.8*, at a
197 rate not to exceed one-half of one percent of the gross receipts of such company accruing from sales to
198 the ultimate consumer in such county, city or town. However, in the case of telephone companies,
199 charges for long distance telephone calls shall not be included in gross receipts for purposes of license
200 taxation.

201 § 58.1-3814. Water or heat, light and power companies.

202 A. Any county, city or town may impose a tax on the consumers of the utility service or services
203 provided by any water or heat, light and power company or other corporations coming within the
204 provisions of Chapter 26 (§ 58.1-2600 et seq.) *or any gas suppliers as defined in subsection D of*
205 *§ 56-235.8*, which tax shall not be imposed at a rate in excess of twenty percent of the monthly amount
206 charged to consumers of the utility service and shall not be applicable to any amount so charged in
207 excess of fifteen dollars per month for residential customers. Any city, town or county that on July 1,
208 1972, imposed a utility consumer tax in excess of limits specified herein may continue to impose such a
209 tax in excess of such limits, but no more.

210 B. Any tax enacted pursuant to the provisions of this section, or any change in a tax or structure
211 already in existence, shall not be effective until sixty days subsequent to written notice by certified mail
212 from the county, city or town imposing such tax or change thereto, to the registered agent of the utility
213 corporation that is required to collect the tax.

214 C. Any county, city or town may impose a tax on the consumers of services provided within its
215 jurisdiction by any electric light and power, water or gas company owned by another municipality;
216 provided, that no county shall be authorized under this section to impose a tax within a municipality on
217 consumers of services provided by an electric light and power, water or gas company owned by that
218 municipality. Any county tax imposed hereunder shall not apply within the limits of any incorporated
219 town located within such county which town imposes a town tax on consumers of utility service or
220 services provided by any corporation coming within the provisions of Chapter 26, provided that such
221 town (i) provides police or fire protection, and water or sewer services, provided that any such town
222 served by a sanitary district or service authority providing water or sewer services or served by the
223 county in which the town is located when such service or services are provided pursuant to an
224 agreement between the town and county shall be deemed to be providing such water and sewer services
225 itself, or (ii) constitutes a special school district and is operated as a special school district under a town
226 school board of three members appointed by the town council.

227 Any county, city or town may provide for an exemption from the tax for any public safety agency as
228 defined in § 58.1-3813.

229 Any city with a population of not less than 27,000 and not more than 28,500 may provide an
230 exemption from the tax for any church or religious body entitled to an exemption pursuant to Article 4
231 (§ 58.1-3650 et seq.) of Chapter 36.

232 Any municipality required to collect a tax imposed under authority of this section for another city or
233 county or town shall be entitled to a reasonable fee for such collection.

234 D. In a consolidated county wherein a tier-city exists, any county tax imposed hereunder shall apply
235 within the limits of any tier-city located in such county, as may be provided in the agreement or plan of
236 consolidation, and such tier-city may impose a tier-city tax on the same consumers of utility service or
237 services, provided that the combined county and tier-city rates do not exceed the maximum permitted by
238 state law.

239 E. The tax authorized by this section shall not apply to utility sales of products used as motor
240 vehicle fuels.

241 § 59.1-199. Exclusions.

242 Nothing in this chapter shall apply to:

243 A. Any aspect of a consumer transaction which aspect is authorized under laws or regulations of this
244 Commonwealth or the United States, or the formal advisory opinions of any regulatory body or official

245 of this Commonwealth or the United States.

246 B. Acts done by the publisher, owner, agent or employee of a newspaper, periodical, or radio or
247 television station, or other advertising media such as outdoor advertising and advertising agencies, in the
248 publication or dissemination of an advertisement in violation of § 59.1-200, unless it be proved that such
249 person knew that the advertisement was of a character prohibited by § 59.1-200.

250 C. Those aspects of a consumer transaction which are regulated by the Federal Consumer Credit
251 Protection Act, 15 U.S.C. § 1601 et seq.

252 D. Banks, savings institutions, credit unions, small loan companies, public service corporations,
253 mortgage lenders as defined in § 6.1-409, broker-dealers as defined in § 13.1-501 and insurance
254 companies regulated and supervised by the State Corporation Commission or a comparable federal
255 regulating body, *other than gas suppliers as defined in subsection D of § 56-235.8.*

256 E. Any aspect of a consumer transaction which is subject to the Landlord and Tenant Act, Chapter
257 13 (§ 55-217 et seq.) of Title 55 or the Virginia Residential Landlord and Tenant Act, Chapter 13.2
258 (§ 55-248.2 et seq.) of Title 55, unless the act or practice of a landlord constitutes a misrepresentation or
259 fraudulent act or practice under § 59.1-200.

260 F. Real estate licensees who are licensed under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.