

# VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

## CHAPTER 706

*An Act to amend and reenact §§ 56-235.8, 58.1-400.2, 58.1-403, 58.1-440.1, 58.1-504, 58.1-2626 as it shall become effective, 58.1-2627.1, 58.1-2660 as it shall become effective, 58.1-3731 and 58.1-3814 of the Code of Virginia; to amend the Code of Virginia by adding in Title 58.1 a chapter numbered 29.1, consisting of sections numbered 58.1-2904 through 58.1-2907; and to repeal the third enactment of Chapter 494 of the 1999 Acts of Assembly, relating to natural gas customers.*

[H 279]

Approved April 8, 2000

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

**1. That §§ 56-235.8, 58.1-400.2, 58.1-403, 58.1-440.1, 58.1-504, 58.1-2626 as it shall become effective, 58.1-2627.1, 58.1-2660 as it shall become effective, 58.1-3731 and 58.1-3814 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 58.1 a chapter numbered 29.1, consisting of sections numbered 58.1-2904 through 58.1-2907, as follows:**

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

A. Notwithstanding any provision of law to the contrary, each public utility authorized to furnish natural gas service in Virginia (gas utility) is authorized to offer to all of ~~its~~ *the gas utility's* customers not eligible for transportation service under tariffs in effect on the effective date of this section, direct access to gas suppliers (retail supply choice) by filing a plan for implementing retail supply choice with the State Corporation Commission for approval. The provisions of this section shall not apply to any retail supply choice pilot program in effect on July 1, 1999. The Commission shall accept such a plan for filing within thirty days of filing if it contains, at a minimum:

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 nongas fixed costs on a nonvolumetric 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. Any proposed unbundling rates shall include an explanation of the methodology used to develop the rates and a calculation of revenues, by customer class, thereby produced;

3. ~~A~~ *Nonbypassable, competitively neutral mechanism* ~~annual surcharges~~ for the gas utility to *properly allocate and* recover from its *firm service* customers *not eligible for nonpilot transportation service under tariffs in effect on the effective date of this section*, its nonmitigable costs ~~prudently incurred to support its merchant obligation and to facilitate~~ *associated with the provision of* retail supply choice, including ~~reasonable~~ *prudently incurred* contract obligation costs and transition costs. For the purposes of this section, contract obligation costs are costs associated with acquiring, maintaining or terminating interstate and intrastate pipeline and storage capacity contracts, less revenues generated ~~with~~ *by* 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. Tariff provisions to balance the receipts and deliveries of gas supplies to retail supply choice customers and allocate the gas utility's gas costs so that ~~the retail supply choice~~ *one class of* customers ~~are~~ *is* not subsidized by ~~nonretail choice~~ *another class of* customers;

5. Tariff provisions requiring the gas utility, at a minimum, to offer gas suppliers or retail supply choice customers the right to acquire the gas utility's upstream transmission and/or storage capacity *in a manner that assures that one class of customers is not subsidized by another class of customers, provided that nothing contained herein shall deny the gas utility the right to request Commission approval of such tariff provisions as are designed to ensure the safe and reliable delivery of natural gas to firm service customers on its system, including provisions requiring gas suppliers to accept assignment of upstream transportation and storage capacity, and/or allowing the gas utility to retain a portion of its upstream transportation and storage capacity to ensure safe and reliable natural gas service to its customers;*

6. A code of conduct governing the activities and relationships between the gas utility and gas suppliers to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power. Such codes of conduct shall incorporate or be consistent with any rule or guideline established by the Commission; and

7. Any other requirement established by Commission rule or regulation.

The Commission may, by rule or regulation, impose such additional filing requirements as it deems necessary in the public interest. The Commission may also require a gas utility to continue to serve as a gas supplier to its customers after the gas utility's plan becomes effective and under such terms and conditions as are necessary to protect the public interest.

*B. After the Commission has accepted a filing as provided in subsection A, the Commission shall review and approve a plan filed by a gas utility unless it determines, after notice and an opportunity for public hearing, that the plan would:*

- 1. Adversely affect the quality, safety, or reliability of natural gas service by the gas utility or the provision of adequate service to the gas utility's customers;*
- 2. Result in rates charged by the gas utility that are not just and reasonable rates within the contemplation of § 56-235.2 or that are in excess of levels approved by the Commission under § 56-235.6, as the case may be;*
- 3. Adversely affect the gas utility's customers not participating in the retail supply choice plan; or*
- 4. 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 nongas fixed costs on a nonvolumetric basis shall not necessarily constitute unreasonable discrimination); or*
- 5. Not be in the public interest.*

*The Commission shall, after the acceptance of a filing of a retail supply choice plan, approve or disapprove the plan within 120 days. The 120-day period may be extended by Commission order for an additional period not to exceed sixty days. The retail supply choice plan shall be deemed approved if the Commission fails to act within 120 days or any extended period ordered by the Commission. The Commission shall approve a retail supply choice plan filed by a gas utility pursuant to this subsection regardless of whether it has promulgated rules and regulations pursuant to subsection A. The Commission may also modify a plan filed by a gas utility to ensure that it conforms to the provisions of this subsection and is otherwise in the public interest. Plans approved pursuant to this section shall not be placed into effect before July 1, 2000.*

*C. The Commission may, on its own motion, direct a gas utility to file a retail supply choice plan, which shall comply with subsection A, shall include such other details in the plan as the Commission may require, and does not cause the effects set forth in subsection B, or the Commission may, on its own motion, propose a plan for a gas utility for retail supply choice that complies with the requirements of subsection A and does not cause the effects set forth in subsection B. The Commission may approve any plans under this subsection after notice to all affected parties and an opportunity for hearing.*

*D. Once a plan becomes effective pursuant to this section, if the Commission determines, after notice and opportunity for hearing, that the plan is causing, or is reasonably likely to cause, the effects set forth in subsection B, it may order revisions to the plan to remove such effects. Any such revisions to the plan will operate prospectively only.*

*E. If, upon application of at least twenty-five percent of retail supply choice customers or of 500 retail choice customers, whichever number is lesser, or by the gas utility, it is alleged that the marketplace for retail supply choice customer is not reasonably competitive or results in rates unreasonably in excess of what would otherwise be charged by the gas utility, or if the Commission renders such a determination upon its own motion, then the Commission may, after notice, and opportunity for hearing, terminate the gas utility's retail supply choice program and provide for an orderly return of the retail choice customers to the gas utility's traditional retail natural gas sales service. In such event, the gas utility shall be given the opportunity to acquire, under reasonable and competitive terms and conditions and within a reasonable time period, such upstream transportation and storage capacity as is necessary for it to provide traditional retail natural gas sales service to former retail supply choice customers.*

*F. Licensure of gas suppliers.*

*1. No person, other than a gas utility, shall engage in the business of selling natural gas to the residential and small commercial 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 oath or affirmation and be in such form and contain such information as the Commission may, by rule or regulation, require. For purposes of this subsection, the Commission shall require a gas supplier to demonstrate that it has the means to provide natural gas to essential human needs customers. A gas supplier license shall be issued to any qualified applicant within forty-five days of the date of filing such application, authorizing in whole or in part the service covered by the application, unless the Commission determines otherwise for good cause shown. A person holding such a license shall not be considered a "public service corporation," "public service company" or a "public utility" and shall not be subject to regulation as such; however, nothing contained herein shall be construed to affect the liability of such a person for any license tax levied pursuant to Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1. No license issued under this chapter shall be transferred without prior Commission approval as being finding that such transfer is not inconsistent with the public interest. If the Commission determines, after notice and opportunity for public hearing,*

that a gas supplier has failed to comply with the provisions of this subsection or the Commission's rules, regulations or orders, the Commission may *enjoin, fine, or punish any such failure pursuant to the Commission's authority under this statute and under Title 12.1 of the Code of Virginia. The Commission may also suspend or revoke the gas supplier's license or take such other action as is necessary to protect the public interest.*

2. The Commission shall establish rules and regulations for the implementation of this subsection, provided that:

a. The Commission's rules and regulations shall not govern the rates charged by licensed gas suppliers, except that the Commission's rules and regulations may govern the terms and conditions of service of licensed gas suppliers to protect the gas utility's customers from commercially unreasonable terms and conditions; and

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

3. The Commission shall also have the authority to issue rules and regulations governing the marketing practices of gas suppliers.

¶ G. Retail customers' private right of action; marketing practices.

1. No gas supplier shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices in providing or marketing gas service.

2. Any person who suffers loss (i) as the result of *fraudulent* marketing practices, including telemarketing practices, engaged in by any gas supplier providing any service made competitive under this section, or of any violation of rules and regulations issued by the Commission pursuant to subdivision ¶ F 3, or (ii) as the result of any violation of subdivision ¶ 1 of this subsection, shall be entitled to initiate an action to recover actual damages, or \$500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or \$1,000, whichever is greater. Notwithstanding any other provisions of law to the contrary, in addition to any damages awarded, such person also may be awarded reasonable attorney's fees and court costs.

3. The Attorney General, the attorney for the Commonwealth or the attorney for the city, county or town may cause an action to be brought in the appropriate circuit court for relief of violations referenced in subdivision ¶ 2 of this subsection.

4. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person or governmental agency initiating an action pursuant to this section may be awarded reasonable attorney's fees and court costs.

5. Any action pursuant to this ~~section~~ subsection shall be commenced by persons other than the Commission within two years after its accrual. The cause of action shall accrue as provided in § 8.01-230. However, if the Commission initiates proceedings, or any other governmental agency files suit for violations under this section, the time during which such proceeding or governmental suit and all appeals therefrom are pending shall not be counted as any part of the period within which an action under this section shall be brought.

6. The circuit court may make such additional orders or decrees as may be necessary to restore to any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may have been acquired from such person by means of any act or practice violative of this subsection ¶, provided; that such person shall be identified by order of the court within 180 days from the date of any order permanently enjoining the unlawful act or practice.

7. In any case arising under this subsection, no liability shall be imposed upon any gas supplier who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of subdivision 1 of this subsection 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 subdivision 4 of this subsection to individuals aggrieved as a result of an unintentional violation of this subsection.

H. *Authorized public utilities shall file with the Commission tariff revisions reflecting the net effect of the elimination of taxes pursuant to subsection B of § 58.1-2904 and the addition of state income taxes pursuant to § 58.1-400. Such tariffs shall be effective for service rendered on and after January 1, 2001, and shall be filed at least forty-five days prior to the effective date. Such filing shall not constitute a rate increase for the purposes of § 56-235.4.*

I. *Consumer education.*

1. *The Commission shall develop a consumer education program designed to provide the following information to retail customers concerning retail supply choice for natural gas customers:*

- a. *Opportunities and options in choosing natural gas suppliers;*
- b. *Marketing and billing information gas suppliers will be required to furnish retail customers;*
- c. *Retail customers' rights and obligations concerning the purchase of natural gas and related services; and*

*d. Such other information as the Commission may deem necessary and appropriate and in the public interest.*

*2. The consumer education program authorized herein may be conducted in conjunction with the program provided for in § 56-592.*

*3. The Commission shall establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against gas utilities, public service companies, licensed suppliers and other providers of any services affected by this section. Upon the request of any interested person or the Attorney General, or upon its own motion, the Commission shall be authorized to inquire into possible violations of § 56-235.8 and to enjoin or punish any violations thereof pursuant to its authority under § 56-235.8, this title, or Title 12.1. The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.*

*4. For all billing statements sent on and after August 1, 2000, all gas utilities, as defined in subsection A, shall enclose the following information in all billing statements for retail natural gas service:*

*a. Gas utilities shall separately state an approximate amount of the tax imposed under §§ 58.1-2626, 58.1-2660 and 58.1-3731 which is included in the customer's bill until such tax is no longer imposed; and*

*b. For all such billing statements, a statement which reads as follows shall be included: "Beginning January 1, 2001, the current state and local gross receipts taxes on sales of natural gas will be replaced by a tax based on the consumption of natural gas by consumers. In the past, the current gross receipts tax has always been included in the rate charged for natural gas. Now, this tax is being separately stated. The total gross receipts tax imposed by Virginia and the localities is approximately two percent of the amount charged to consumers. The new state and local consumption tax will be charged at an approximate rate of \$0.02 per 100 cubic feet (CCF) of natural gas consumed. While this rate was designed to be less than, or equal to, the effect of the current gross receipts tax which is being replaced, the tax you pay may actually be higher in your locality. This statement is being provided for your information."*

§ 58.1-400.2. Taxation of electric suppliers, pipeline distribution companies, gas utilities, and gas suppliers.

A. Any electric supplier, *pipeline distribution company, gas utility, or gas supplier* that is subject to income tax pursuant to the Internal Revenue Code of 1986, as amended, except those organized as cooperatives and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to the tax levied pursuant to § 58.1-400.

B. Any electric supplier that operates as a cooperative and is exempt from income tax pursuant to § 501 of the Internal Revenue Code of 1986, shall be subject to tax at the tax rate set forth in § 58.1-400 on all modified net income derived from nonmember sales. *Any gas supplier, pipeline distribution company or gas utility which has a taxable year that begins after January 1, 2001, but before January 1, 2002, shall also be subject to the provisions under subsection E.*

C. The following words and terms, when used in this section, shall have the following meanings:

"Electric supplier" means any corporation, cooperative, partnership or other business entity providing electric service.

"Electricity" is deemed tangible personal property for purposes of the corporate income tax pursuant to ~~Article 10 (§ 58.1-400 et seq.) of this chapter~~ *article.*

"Gas supplier" means any person licensed by the State Corporation Commission to engage in the business of selling natural gas.

"Gas utility" has the same meaning as provided in § 56-235.8.

"Members" means those customers of a cooperative who receive allocations of patronage capital from a cooperative.

"Modified net income" means all revenue of a cooperative from the sale of electricity within the Commonwealth with the following subtractions:

1. Revenue attributable to sales of electric power to its members.

2. Nonmember share of all ordinary and necessary expenses paid or incurred during the taxable year in carrying on the sale of electric power to nonmembers. Such nonmember expenses shall be determined by allocating the amount of such expenses between sales of electricity to members and sales of electricity to nonmembers. Such allocation shall be applicable to all tax credits available to an electric supplier.

"Nonmember" means those customers which are not members.

"Ordinary and necessary expenses paid or incurred" means ordinary and necessary expenses determined according to generally accepted accounting principles.

"Pipeline distribution company" has the same meaning as provided in § 58.1-2600.

D. The Department of Taxation shall promulgate all regulations necessary to implement the intent of this section. This section shall apply to taxable years beginning on and after January 1, 2001.

*E. 1. Any gas supplier, pipeline distribution company or gas utility which has a taxable year that*

*begins after January 1, 2001, but before January 1, 2002, shall be required to file an income tax return as if a short taxable year has occurred covering the period beginning January 1, 2001, and ending on the last day prior to the beginning of the gas supplier's, pipeline distribution company's or gas utility's taxable year pursuant to § 58.1-440 A.*

*2. If a return is required to be made under subdivision 1 of this subsection, federal taxable income will be determined using the methodology prescribed in § 443 of the Internal Revenue Code, as if the gas supplier, pipeline distribution company or gas utility was undergoing a change of annual accounting period, and § 58.1-440 B and the regulations thereunder.*

§ 58.1-403. Additional modifications to determine Virginia taxable income for certain corporations.

In addition to the modifications set forth in § 58.1-402 for determining Virginia taxable income for corporations generally, the adjustments set forth in subdivision 1 shall be made to the federal taxable income for savings institutions and as set forth in subdivisions 2 and 3 for railway companies ~~and~~, as set forth in subdivisions 6 and 7 for telecommunications companies, *and as set forth in subdivisions 8 and 9 for gas suppliers, pipeline distribution companies and gas utilities.*

1. There shall be added the deduction allowed for bad debts. The percentage which would have been used in determining the bad debt deduction under the Internal Revenue Code of 1954, as in effect immediately prior to the enactment of the Tax Reform Act of 1986 (Public Law 99-514), shall then be applied to federal taxable income as adjusted under the provisions of § 58.1-402 and the amount so determined subtracted therefrom.

2. There shall be added to federal taxable income any amount which was deducted in determining taxable income as a net operating loss carryover from any taxable year beginning on or before December 31, 1978.

3. Where such railway company would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year beginning after December 31, 1978, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 1979, there shall be added to federal taxable income any amount which was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from federal taxable income the amount which could have been deducted as a net operating loss carryover or net capital loss carryover in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.

4., 5. [Repealed.]

6. There shall be added to federal taxable income any amount which was deducted in determining taxable income as a net operating loss carryover from any taxable year beginning on or before December 31, 1988.

7. Where such telecommunications company would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year beginning after December 31, 1988, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 1989, there shall be added to federal taxable income any amount which was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from federal taxable income the amount which could have been deducted as a net operating loss carryover or net capital loss in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.

8. *There shall be added to federal taxable income any amount that was deducted in determining taxable income as a net operating loss carryover from any taxable year beginning on or before December 31, 2000.*

9. *Where such gas supplier, pipeline distribution company or gas utility would have been allowed to deduct an amount as a net operating loss carryover or net capital loss carryover in determining taxable income for a taxable year beginning after December 31, 2000, but for the fact that such loss, or a portion of such loss, had been carried back in determining taxable income for a taxable year beginning prior to January 1, 2001, there shall be added to federal taxable income any amount that was actually deducted in determining taxable income as a net operating loss carryover or net capital loss carryover and there shall be subtracted from federal taxable income the amount that could have been deducted as a net operating loss carryover or net capital loss in arriving at taxable income but for the fact that such loss, or a portion of such loss, had been carried back for federal purposes.*

§ 58.1-440.1. Accounting-deferred taxes.

In the case of a pipeline distribution company, a gas utility, a gas supplier or an electric supplier, as defined in § 58.1-400.2, that was subject to the tax imposed under § 58.1-2626 with respect to its gross receipts received during the year commencing January 1, 2000, and that on or after January 1, 2001, becomes subject to the corporate income tax pursuant to Article 10 (§ 58.1-400 et seq.) of this chapter, net income shall be computed by taking into account the following adjustments:

In addition to the deductions for depreciation, amortization, or other cost recovery currently allowed by this Code, there shall be allowed deductions for the amortization of the Virginia tax basis of assets

that are recoverable for financial accounting and/or income tax purposes placed in service prior to the adjustment date. For purposes of this section, (i) "Virginia tax basis" means the aggregate adjusted book basis less the aggregate adjusted tax basis of such assets as recorded on the company's books of accounts as of the last day of the tax year immediately preceding the adjustment date and (ii) "adjustment date" means the first day of the tax year in which such *pipeline distribution company, gas utility, gas supplier or electric supplier* becomes subject to the tax imposed by § 58.1-400.2 A. The amortization of the Virginia tax basis shall be computed using the straight-line method over a period of thirty years, beginning on the adjustment date. Gain or loss on the disposition or retirement of any such asset shall be computed using its adjusted federal tax basis, and the amortization of the Virginia tax basis shall continue thereafter without adjustment. The Department of Taxation shall promulgate regulations describing a reasonable method of allocating the Virginia tax basis in the event that a portion of the ~~electric power supplier's~~ *operations of a pipeline distribution company, gas utility, gas supplier or electric supplier* are separated, spun-off, transferred to a separate company or otherwise disaggregated. *For gas suppliers, pipeline distribution companies or gas utilities which are required to file an income tax return for a short taxable year pursuant to subsection E of § 58.1-400.2, a portion of the amortized Virginia tax basis will be disallowed based on the proration in computing Virginia taxable income. Such portion will be recovered as a deduction in the first taxable year after which this deduction is no longer applicable.*

*For rate-making and accounting purposes, the State Corporation Commission shall not require a pipeline distribution company or gas utility to amortize these deferred taxes over a period other than the thirty-year period prescribed herein, nor shall the State Corporation Commission require the treatment of accelerated depreciation different from that allowed for federal income taxes.*

§ 58.1-504. Failure to pay estimated income tax.

A. In case of any underpayment of estimated tax by a corporation, except as provided in subsection D, there shall be added to the tax for the taxable year an amount determined at the rate established for interest under § 58.1-15, upon the amount of the underpayment (determined under subsection B) for the period of the underpayment (determined under subsection C).

B. For purposes of subsection A, the amount of the underpayment shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to ninety percent of the tax shown on the return for the taxable year or, if no return was filed, ninety percent of the tax for such year, over

2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

C. The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

1. The fifteenth day of the fourth month following the close of the taxable year.

2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision B 1 for such installment date.

D. Notwithstanding the provisions of subsections A, B and C, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

1. The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of twelve months.

2. An amount equal to the tax computed at the rate applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

3. An amount equal to ninety percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

a. For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,

b. For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,

c. For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and

d. For the first nine months or for the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year. For purposes of this subdivision, the taxable income shall be placed on an annualized basis by (i) multiplying by twelve the taxable income referred to in subdivision D 3; and (ii) dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or eleven, as the case may be) referred to in subsection A.

E. For purposes of subsection B, subdivisions D 2 and D 3, the term "tax" means the excess of the tax imposed by this chapter over the sum of any credits allowable against the tax.

F. The application of this to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commissioner.

G. *Pipeline distribution companies as defined in § 58.1-2600 and gas utilities, gas suppliers and electric suppliers as defined in § 58.1-400.2* that become subject to taxation under this chapter and prior thereto paid the annual license tax based on gross receipts, shall make estimated tax payments during the first year, *or short taxable year under subsection E of § 58.1-400.2*, they are so subject, and notwithstanding subsection D, any excesses described in subsection B shall constitute an underpayment for such year.

§ 58.1-2626. (Effective January 1, 2002) Annual state license tax on companies furnishing water, heat, light or power.

A. Every corporation doing in the Commonwealth the business of furnishing water, heat, light or power, whether by means of gas or steam, except (i) a pipeline transmission company taxed pursuant to § 58.1-2627.1 ~~or~~, (ii) *a pipeline distribution company as defined in § 58.1-2600 and a gas utility and a gas supplier as defined in § 58.1-400.2*, or (iii) an electric supplier as defined in § 58.1-400.2, shall, for the privilege of doing business within the Commonwealth, pay to the Commonwealth for each tax year an annual license tax equal to two percent of its gross receipts, actually received, from all sources.

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

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

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

§ 58.1-2627.1. Taxation of pipeline companies.

A. ~~Every pipeline distribution company, as defined in § 58.1-2600, shall, for the privilege of doing business within the Commonwealth, pay to the Commission an annual license tax set forth in § 58.1-2626 on its gross receipts derived from sales in Virginia.~~ Every pipeline transmission company shall pay to the Department on its allocated and apportioned net taxable income, in lieu of a license tax, the tax levied pursuant to Chapter 3 (§ 58.1-300 et seq.) (State Income Tax) of this title. There shall be deducted from such allocated and apportioned net income an amount equal to the percentage that gross profit (operating revenues less cost of purchased gas) derived from sales in this Commonwealth for consumption by the purchaser of natural or manufactured gas is of the total gross profit in the Commonwealth of the taxpayer.

B. The annual report of such company required pursuant to § 58.1-2628 shall be made to the Department, on forms prepared and furnished by the Department, if the company is a pipeline transmission company or to the Commission if a pipeline distribution company. The Department shall assess the value of the property of each pipeline transmission company and the Commission shall assess the value of the property of each pipeline distribution company. The applicable county, city, town and magisterial district property levies shall attach thereto. The powers and duties granted to the Commission by §§ 58.1-2633 B and C and 58.1-2634 shall apply mutatis mutandis to the Department.

C. A company liable for the license tax under subsection A shall not be liable for the tax imposed by Chapter 28 (§ 58.1-2814 et seq.) of this title.

D. When a company qualifies as both a pipeline transmission company and a pipeline distribution company, it shall for property tax valuation purposes be considered a pipeline distribution company.

§ 58.1-2660. (Effective January 1, 2002) 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, by means of gas or steam, except for electric suppliers, *gas utilities, and gas suppliers as defined in § 58.1-400.2 and pipeline distribution companies as defined in § 58.1-2600*;

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.

#### CHAPTER 29.1.

#### NATURAL GAS CONSUMPTION TAX.

##### *§ 58.1-2904. Imposition of tax.*

A. Effective January 1, 2001, there is hereby imposed, in addition to the local consumer utility tax of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 of this title, a tax on the consumers of natural gas in the Commonwealth based on volume of gas at standard pressure and temperature in units of 100 cubic feet (CCF) delivered by the pipeline distribution company or gas utility and used per month. Each consumer of natural gas in the Commonwealth shall pay tax on the consumption of all natural gas consumed per month not in excess of 500 CCF at the following rates: (i) state consumption tax rate of \$0.0135 per CCF, (ii) local consumption tax rate of \$0.004 per CCF, and (iii) a special regulatory tax rate of up to \$0.002 per CCF.

B. The tax rates set forth in subsection A are in lieu of and replace the state gross receipts tax pursuant to § 58.1-2626, the special regulatory revenue tax pursuant to § 58.1-2660, and the local license tax pursuant to § 58.1-3731 levied on corporations furnishing heat, light or power by means of natural gas.

C. The tax of consumers under this section shall not be imposed on consumers served by a gas utility owned or operated by a municipality.

D. The tax authorized by this chapter shall not apply to use by divisions or agencies of federal, state and local governments.

##### *§ 58.1-2905. Collection and remittance of tax.*

A. A pipeline distribution company or gas utility shall collect the tax from the consumer by adding it as a separate charge to the consumer's monthly statement. Until the consumer pays the tax to such company, the tax shall constitute a debt of the consumer to the Commonwealth. If any consumer receives and pays for gas but refuses to pay the tax that is imposed by the Commonwealth, the pipeline distribution company or gas utility shall notify the Commission of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a pipeline distribution company or gas utility, including the tax imposed by the Commonwealth, the pipeline distribution company or gas utility shall follow its normal collection procedures with regard to the charge for the gas and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for gas service and the tax and (ii) remit the tax portion to the Commission. After the consumer pays the tax to the pipeline distribution company or gas utility, the taxes shall be deemed to be held in trust by such pipeline distribution company or gas utility until remitted to the Commission.

B. A pipeline distribution company or gas utility shall remit monthly to the Commission the amount of tax paid during the preceding month by the pipeline distribution company's consumers, except for the portion which represents the local consumption tax, which portion shall be remitted to the locality in which the natural gas was consumed and shall be based on such locality's license fee rate which it imposed.

C. The natural gas consumption tax shall be remitted monthly, on or before the last day of the succeeding month of collection. Those portions of the natural gas consumption tax that related to the state consumption tax and the special regulatory tax shall be remitted to the Commission; the portion that relates to the local consumption tax shall be remitted to the appropriate localities. Failure to remit timely will result in a ten percent penalty.

D. Taxes on natural gas sales in the year ending December 31, 2000, relating to the local license tax, shall be paid in accordance with § 58.1-3731. Monthly payments in accordance with subsection C shall commence on February 28, 2001.

E. The portion of the natural gas consumption tax relating to the local license tax replaces and precludes localities from imposing a license tax in accordance with § 58.1-3731 and the business, professional, occupational and license tax in accordance with Chapter 37 (§ 58.1-3700 et seq.) of this title on gas suppliers subsequent to December 31, 2000, except as provided in subsection D.

##### *§ 58.1-2906. Natural gas consumption tax relating to the special regulatory tax; notification of changes.*

A. The Commission may in the performance of its function and duty in levying the natural gas utility consumption tax relating to the special regulatory tax, omit the levy on any portion of the tax fixed in § 58.1-2904 as is unnecessary within the Commission's sole discretion for the accomplishment of the objects for which the tax is imposed, including a reasonable margin in the nature of a reserve fund.

B. The Commission shall notify all pipeline distribution companies and gas utilities collecting the tax on consumers of natural gas of any change in the natural gas consumption tax relating to the special regulatory tax not later than the first day of the second month preceding the month in which the revised rate is to take effect.

##### *§ 58.1-2907. Use of natural gas consumption tax relating to special regulatory tax.*

The natural gas consumption tax relating to the special regulatory tax paid into the treasury under this chapter shall be deposited into a special fund used only by the Commission for the purpose of making appraisals, assessments and collections against natural gas suppliers and public service



*corporations furnishing heat, light and power by means of natural gas and for the further purposes of the Commission in investigating and inspecting the properties or the services of such natural gas suppliers and public service corporations, and for the supervision and administration of all laws relative to such natural gas suppliers and public service corporations, whenever the same shall be deemed necessary by the Commission.*

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

Every county, city or town is hereby authorized to impose a license tax, in addition to any tax levied under Chapter 26 (§ 58.1-2600 *et seq.*) of this title, on (i) telephone and telegraph companies; (ii) water companies; and (iii) heat, light and power companies (except electric suppliers, *gas utilities and gas suppliers* as defined in § 58.1-400.2 *and pipeline distribution companies as defined in § 58.1-2600*) at a rate not to exceed one-half of one percent of the gross receipts of such company accruing from sales to the ultimate consumer in such county, city or town. However, in the case of telephone companies, charges for long distance telephone calls shall not be included in gross receipts for purposes of license taxation. After December 31, 2000, the license tax authorized by this section shall not be imposed on *pipeline distribution companies as defined in § 58.1-2600 or on gas suppliers, gas utilities or electric suppliers* (as defined in § 58.1-400.2), except as provided in § 58.1-2901 D.

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

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

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

C. Any county, city or town may impose a tax on the consumers of services provided within its jurisdiction by any electric light and power, water or gas company owned by another municipality; provided, that no county shall be authorized under this section to impose a tax within a municipality on consumers of services provided by an electric light and power, water or gas company owned by that municipality. Any county tax imposed hereunder shall not apply within the limits of any incorporated town located within such county which town imposes a town tax on consumers of utility service or services provided by any corporation coming within the provisions of Chapter 26 (§ 58.1-2600 *et seq.*) of this title, provided that such town (i) provides police or fire protection, and water or sewer services, provided that any such town served by a sanitary district or service authority providing water or sewer services or served by the county in which the town is located when such service or services are provided pursuant to an agreement between the town and county shall be deemed to be providing such water and sewer services itself, or (ii) constitutes a special school district and is operated as a special school district under a town school board of three members appointed by the town council.

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

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

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

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

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

F. For taxable years beginning on and after January 1, 2001, any county, city or town may impose a tax on consumers of electricity provided by electric suppliers as defined in § 58.1-400.2 which shall not be imposed at a rate in excess of \$.015 (1-1/2 cent) per kWh billed monthly to consumers of electricity and shall not be applicable to any kilowatt hours billed in excess of 200 kWh per month for residential customers. In any county, city or town that imposes a consumer utility tax immediately prior to January 1, 2001, (i) on residential customers at a higher rate than the maximum rate on residential customers under this section because the rate of consumer utility tax it imposed on July 1, 1972, exceeded the limits specified in subsection A or (ii) on other consumers not subject to the maximum rate set by this section, the service provider shall convert the dollar amount rate to a kWh rate of tax ~~be~~ based on the

monthly tax that is being collected immediately prior to January 1, 2001. However, nothing in this section shall be construed to prohibit or limit any county, city or town, after completion of the transition period on January 1, 2004, from imposing a consumer utility tax on nonresidential customers (as converted to a per kWh rate basis) in any amounts authorized by this section immediately prior to July 1, 1999. The service provider shall bill the tax to all users to whom it delivers electricity; and shall remit such tax to the appropriate locality in accordance with § 58.1-2901. The provisions of this subsection shall be applicable without the necessity of the locality amending or reenacting its existing ordinance imposing such tax.

Subsection B shall apply to any tax on the consumers of electricity enacted or amended pursuant to this section, except that the notice provided therein shall be given to the registered agent of the service provider that is required to collect the tax.

*G. Any county, city or town may impose a tax on consumers of natural gas provided by pipeline distribution companies and gas utilities. The tax so imposed shall be based on CCF delivered monthly to consumers and shall not exceed the limits set forth in this subsection. The pipeline distribution company or gas utility shall bill the tax to all users who are subject to the tax and to whom it delivers gas and shall remit such tax to the appropriate locality in accordance with § 58.1-2905. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of gas shall convert to a tax based on CCF delivered monthly to consumers, taking into account minimum billing charges. The CCF tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among gas consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. Current pipeline distribution companies and gas utilities shall provide to localities not later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to three dollars per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to CCF. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received and due from each of the nonresidential gas purchase and gas transportation classes in calendar year 1999 for the CCF used that year. CCF tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of CCF used, and the amount of consumer utility tax paid and due in calendar year 1999 on the same CCF usage. The initial maximum rate of tax imposed under this section shall continue, unless lowered, until December 31, 2003. Beginning January 1, 2004, nothing in this section shall be construed to prohibit or limit any locality from imposing a consumer utility tax on nonresidential customers up to the amount authorized by subsection A.*

*On or before October 31, 2000, any locality imposing a tax on consumers of gas shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through H of this section. Notice of such amendment shall be provided to pipeline distribution companies and gas utilities in a manner consistent with subsection B except that "registered agent of the pipeline distribution company or gas utility" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.*

~~G. H.~~ *Until the consumer pays the tax to such service provider gas utility or pipeline distribution company, the tax shall constitute a debt to the locality. If any consumer receives and pays for gas but refuses to pay the tax that is imposed by the locality, the service provider gas utility or pipeline distribution company shall notify the localities of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a gas utility or pipeline distribution company, including the tax imposed by a locality, the gas utility or pipeline distribution company shall follow its normal collection procedures with regard to the charge for the gas and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for gas service and the tax and (ii) remit the tax portion to the appropriate locality. After the consumer pays the tax to the service provider gas utility or pipeline distribution company, the taxes shall be deemed to be held in trust by such service provider gas utility or pipeline distribution company until remitted to the localities.*

*I. For purposes of this section:*

*"Class of consumers" means a category of consumers served under a rate schedule established by the pipeline distribution company and approved by the State Corporation Commission.*

*"Gas utility" has the same meaning as provided in § 56-235.8.*

*"Pipeline distribution company" has the same meaning as provided in § 58.1-2600.*

**2. That the amendments to §§ 58.1-3731 and 58.1-3814 shall take effect on January 1, 2001, and the amendments to §§ 58.1-2626 and 58.1-2660 as they shall become effective and § 58.1-2627.1 shall take effect on January 1, 2002.**

**3. That the third enactment of Chapter 494 of the 1999 Acts of Assembly is repealed.**