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SENATE BILL NO. 185

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 15, 2000)

(Patron Prior to Substitute—Senator Watkins)

A BILL 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 clause of Chapter 494 of the 1999 Acts of Assembly, relating to natural gas customers.

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 for the gas utility to recover from its customers its nonmitigable costs prudently incurred to support its merchant obligation and to facilitate retail supply choice, including reasonable contract obligation costs and transition costs. Nonbypassable, competitively neutral annual surcharges for the gas utility to properly allocate and recover from its firm service customers not eligible for non-pilot transportation service under tariffs in effect on the effective date of this section, its nonmitigable costs associated with the provision of retail supply choice, including 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

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60 power. Such codes of conduct shall incorporate or be consistent with any rule or guideline established  
61 by the Commission; and

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

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

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

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

72 2. Result in rates charged by the gas utility that are not just and reasonable rates within the  
73 contemplation of § 56-235.2 or that are in excess of levels approved by the Commission under  
74 § 56-235.6, as the case may be;

75 3. Adversely affect the gas utility's customers not participating in the retail supply choice plan; ~~or~~

76 4. Unreasonably discriminate against one class of the gas utility's customers in favor of another class  
77 (provided, however, that a gas utility's recovery of nongas fixed costs on a nonvolumetric basis shall not  
78 necessarily constitute unreasonable discrimination); *or*

79 5. *Not be in the public interest.*

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

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

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

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

110 ~~EF.~~ *Licensure of gas suppliers.*

111 1. No person, other than a gas utility, shall engage in the business of selling natural gas to the  
112 residential and small commercial customers of a gas utility that has an approved plan implementing  
113 retail supply choice unless such person (for the purpose of this section, "gas supplier") holds a license  
114 issued by the Commission. An application for a gas supplier license must be made to the Commission in  
115 writing, be verified by oath or affirmation and be in such form and contain such information as the  
116 Commission may, by rule or regulation, require. For purposes of this subsection, the Commission shall  
117 require a gas supplier to demonstrate that it has the means to provide natural gas to essential human  
118 needs customers. A gas supplier license shall be issued to any qualified applicant within forty-five days  
119 of the date of filing such application, authorizing in whole or in part the service covered by the  
120 application, unless the Commission determines otherwise for good cause shown. A person holding such  
121 a license shall not be considered a "public service corporation," "public service company" or a "public

122 utility" and shall not be subject to regulation as such; however, nothing contained herein shall be  
 123 construed to affect the liability of such a person for any license tax levied pursuant to Article 2  
 124 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1. No license issued under this chapter shall be  
 125 transferred without prior Commission approval ~~as being~~ *finding that such transfer is not inconsistent*  
 126 with the public interest. If the Commission determines, after notice and opportunity for public hearing,  
 127 that a gas supplier has failed to comply with the provisions of this subsection or the Commission's rules,  
 128 regulations or orders, the Commission may *enjoin, fine, or punish any such failure pursuant to the*  
 129 *Commission's authority under this statute and under Title 12.1 of the Code of Virginia. The Commission*  
 130 *may also suspend or revoke the gas supplier's license or take such other action as is necessary to*  
 131 *protect the public interest.*

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

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

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

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

143 ~~FG.~~ Retail customers' private right of action; marketing practices.

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

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

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

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

161 5. Any action pursuant to this ~~section~~ *subsection* shall be commenced by *persons other than the*  
 162 *Commission* within two years after its accrual. The cause of action shall accrue as provided in  
 163 § 8.01-230. However, if the Commission initiates proceedings, or any other governmental agency files  
 164 suit for violations under this section, the time during which such proceeding or governmental suit and  
 165 all appeals therefrom are pending shall not be counted as any part of the period within which an action  
 166 under this section shall be brought.

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

172 7. In any case arising under this subsection, no liability shall be imposed upon any gas supplier who  
 173 shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of  
 174 subdivision 1 of this subsection was an act or practice over which the same had no control or (ii) the  
 175 alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures  
 176 reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from  
 177 ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subdivision 4  
 178 of this subsection to individuals aggrieved as a result of an unintentional violation of this subsection.

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

183 *rate increase for the purposes of § 56-235.4.*

184 *I. Consumer education.*

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

187 *a. Opportunities and options in choosing natural gas suppliers;*

188 *b. Marketing and billing information gas suppliers will be required to furnish retail customers;*

189 *c. Retail customers' rights and obligations concerning the purchase of natural gas and related*  
190 *services; and*

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

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

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

203 *§ 58.1-400.2. Taxation of electric suppliers, pipeline distribution companies, gas utilities, and gas*  
204 *suppliers.*

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

209 *B. Any electric supplier that operates as a cooperative and is exempt from income tax pursuant to*  
210 *§ 501 of the Internal Revenue Code of 1986, shall be subject to tax at the tax rate set forth in*  
211 *§ 58.1-400 on all modified net income derived from nonmember sales. Any gas supplier, pipeline*  
212 *distribution company or gas utility which has a taxable year that begins after January 1, 2001, but*  
213 *before January 1, 2002, shall also be subject to the provisions under subsection E.*

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

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

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

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

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

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

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

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

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

232 *"Nonmember" means those customers which are not members.*

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

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

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

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

243 *2. If a return is required to be made under subdivision 1 of this subsection, federal taxable income*  
244 *will be determined using the methodology prescribed in § 443 of the Internal Revenue Code, as if the*

245 *gas supplier, pipeline distribution company or gas utility was undergoing a change of annual accounting*  
 246 *period, and § 58.1-440 B and the regulations thereunder.*

247 § 58.1-403. Additional modifications to determine Virginia taxable income for certain corporations.

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

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

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

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

270 4, 5. [Repealed.]

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

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

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

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

295 § 58.1-440.1. Accounting-deferred taxes.

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

301 In addition to the deductions for depreciation, amortization, or other cost recovery currently allowed  
 302 by this Code, there shall be allowed deductions for the amortization of the Virginia tax basis of assets  
 303 that are recoverable for financial accounting and/or income tax purposes placed in service prior to the  
 304 adjustment date. For purposes of this section, (i) "Virginia tax basis" means the aggregate adjusted book  
 305 basis less the aggregate adjusted tax basis of such assets as recorded on the company's books of

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

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

325 § 58.1-504. Failure to pay estimated income tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

367 E. For purposes of subsection B, subdivisions D 2 and D 3, the term "tax" means the excess of the

368 tax imposed by this chapter over the sum of any credits allowable against the tax.

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

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

377 § 58.1-2626. (Effective January 1, 2002) Annual state license tax on companies furnishing water,  
378 heat, light or power.

379 A. Every corporation doing in the Commonwealth the business of furnishing water, heat, light or  
380 power, whether by means of gas or steam, except (i) a pipeline transmission company taxed pursuant to  
381 § 58.1-2627.1 ~~or~~, (ii) *a pipeline distribution company as defined in § 58.1-2600 and a gas utility and a*  
382 *gas supplier as defined in § 58.1-400.2, or (iii) an electric supplier as defined in § 58.1-400.2, shall, for*  
383 *the privilege of doing business within the Commonwealth, pay to the Commonwealth for each tax year*  
384 *an annual license tax equal to two percent of its gross receipts, actually received, from all sources.*

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

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

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

393 § 58.1-2627.1. Taxation of pipeline companies.

394 A. ~~Every pipeline distribution company, as defined in § 58.1-2600, shall, for the privilege of doing~~  
395 ~~business within the Commonwealth, pay to the Commission an annual license tax set forth in~~  
396 ~~§ 58.1-2626 on its gross receipts derived from sales in Virginia.~~ Every pipeline transmission company  
397 shall pay to the Department on its allocated and apportioned net taxable income, in lieu of a license tax,  
398 the tax levied pursuant to Chapter 3 (§ 58.1-300 et seq.) (State Income Tax) of this title. There shall be  
399 deducted from such allocated and apportioned net income an amount equal to the percentage that gross  
400 profit (operating revenues less cost of purchased gas) derived from sales in this Commonwealth for  
401 consumption by the purchaser of natural or manufactured gas is of the total gross profit in the  
402 Commonwealth of the taxpayer.

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

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

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

414 § 58.1-2660. (Effective January 1, 2002) Special revenue tax; levy.

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

418 1. Corporations furnishing water, heat, light or power, by means of gas or steam, except for electric  
419 suppliers, *gas utilities, and gas suppliers as defined in § 58.1-400.2 and pipeline distribution companies*  
420 *as defined in § 58.1-2600;*

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

423 3. Telephone companies whose gross receipts from business done within the Commonwealth exceed  
424 \$50,000 or a company, the majority of stock or other property of which is owned or controlled by  
425 another telephone company, whose gross receipts exceed the amount set forth herein;

426 4. The Virginia Pilots' Association;

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

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

432 *CHAPTER 29.1.*

433 *NATURAL GAS CONSUMPTION TAX.*

434 § 58.1-2904. *Imposition of tax.*

435 A. *Effective January 1, 2001, there is hereby imposed, in addition to the local consumer utility tax of*  
436 *Article 4 (§ 58.1-3812 et seq.) of Chapter 38 of this title, a tax on the consumers of natural gas in the*  
437 *Commonwealth based on volume of gas at standard pressure and temperature in units of 100 cubic feet*  
438 *(CCF) delivered by the pipeline distribution company or gas utility and used per month. Each consumer*  
439 *of natural gas in the Commonwealth shall pay tax on the consumption of all natural gas consumed per*  
440 *month not in excess of 500 CCF at the following rates: (i) state consumption tax rate of \$0.0135 per*  
441 *CCF, (ii) local consumption tax rate of \$0.004 per CCF, and (iii) a special regulatory tax rate of up to*  
442 *\$0.002 per CCF.*

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

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

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

451 § 58.1-2905. *Collection and remittance of tax.*

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

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

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

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

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

481 § 58.1-2906. *Natural gas consumption tax relating to the special regulatory tax; notification of*  
482 *changes.*

483 A. *The Commission may in the performance of its function and duty in levying the natural gas utility*  
484 *consumption tax relating to the special regulatory tax, omit the levy on any portion of the tax fixed in*  
485 *§ 58.1-2904 as is unnecessary within the Commission's sole discretion for the accomplishment of the*  
486 *objects for which the tax is imposed, including a reasonable margin in the nature of a reserve fund.*

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

491 § 58.1-2907. *Use of natural gas consumption tax relating to special regulatory tax.*

492 *The natural gas consumption tax relating to the special regulatory tax paid into the treasury under*  
 493 *this chapter shall be deposited into a special fund used only by the Commission for the purpose of*  
 494 *making appraisals, assessments and collections against natural gas suppliers and public service*  
 495 *corporations furnishing heat, light and power by means of natural gas and for the further purposes of*  
 496 *the Commission in investigating and inspecting the properties or the services of such natural gas*  
 497 *suppliers and public service corporations, and for the supervision and administration of all laws relative*  
 498 *to such natural gas suppliers and public service corporations, whenever the same shall be deemed*  
 499 *necessary by the Commission.*

500 § 58.1-3731. Certain public service corporations; rate limitation.

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

511 § 58.1-3814. Water or heat, light and power companies.

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

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

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

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

538 Any city with a population of not less than 27,000 and not more than 28,500 may provide an  
 539 exemption from the tax for any church or religious body entitled to an exemption pursuant to Article 4  
 540 (§ 58.1-3650 *et seq.*) of Chapter 36 of *this title*.

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

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

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

550 F. For taxable years beginning on and after January 1, 2001, any county, city or town may impose a  
 551 tax on consumers of electricity provided by electric suppliers as defined in § 58.1-400.2 which shall not

552 be imposed at a rate in excess of \$.015 (1-1/2 cent) per kWh billed monthly to consumers of electricity  
553 and shall not be applicable to any kilowatt hours billed in excess of 200 kWh per month for residential  
554 customers. In any county, city or town that imposes a consumer utility tax immediately prior to January  
555 1, 2001, (i) on residential customers at a higher rate than the maximum rate on residential customers  
556 under this section because the rate of consumer utility tax it imposed on July 1, 1972, exceeded the  
557 limits specified in subsection A or (ii) on other consumers not subject to the maximum rate set by this  
558 section, the service provider shall convert the dollar amount rate to a kWh rate of tax ~~be~~ based on the  
559 monthly tax that is being collected immediately prior to January 1, 2001. However, nothing in this  
560 section shall be construed to prohibit or limit any county, city or town, after completion of the transition  
561 period on January 1, 2004, from imposing a consumer utility tax on nonresidential customers (as  
562 converted to a per kWh rate basis) in any amounts authorized by this section immediately prior to July  
563 1, 1999. The service provider shall bill the tax to all users to whom it delivers electricity; and shall  
564 remit such tax to the appropriate locality in accordance with § 58.1-2901. The provisions of this  
565 subsection shall be applicable without the necessity of the locality amending or reenacting its existing  
566 ordinance imposing such tax.

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

570 *G. Any county, city or town may impose a tax on consumers of natural gas provided by pipeline*  
571 *distribution companies and gas utilities. The tax so imposed shall be based on CCF delivered monthly*  
572 *to consumers and shall not exceed the limits set forth in this subsection. The pipeline distribution*  
573 *company or gas utility shall bill the tax to all users who are subject to the tax and to whom it delivers*  
574 *gas and shall remit such tax to the appropriate locality in accordance with § 58.1-2905. Any locality*  
575 *that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue*  
576 *amount charged to consumers of gas shall convert to a tax based on CCF delivered monthly to*  
577 *consumers, taking into account minimum billing charges. The CCF tax rates shall, to the extent*  
578 *practicable: (i) avoid shifting the amount of the tax among gas consumer classes and (ii) maintain*  
579 *annual revenues being received by localities from such tax at the time of the conversion. Current*  
580 *pipeline distribution companies and gas utilities shall provide to localities not later than August 1, 2000,*  
581 *information to enable localities to convert their tax. The maximum amount of tax imposed on residential*  
582 *consumers as a result of the conversion shall be limited to three dollars per month, except any locality*  
583 *that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax*  
584 *on residential consumers at an amount no higher than the maximum tax in effect prior to January 1,*  
585 *2001, as converted to CCF. For nonresidential consumers, the initial maximum rate of tax imposed as a*  
586 *result of the conversion shall be based on the annual amount of revenue received and due from each of*  
587 *the nonresidential gas purchase and gas transportation classes in calendar year 1999 for the CCF used*  
588 *that year. CCF tax rates imposed on nonresidential consumers shall be based at a class level on such*  
589 *factors as existing minimum charges, the amount of CCF used, and the amount of consumer utility tax*  
590 *paid and due in calendar year 1999 on the same CCF usage. The initial maximum rate of tax imposed*  
591 *under this section shall continue, unless lowered, until December 31, 2003. Beginning January 1, 2004,*  
592 *nothing in this section shall be construed to prohibit or limit any locality from imposing a consumer*  
593 *utility tax on nonresidential customers up to the amount authorized by subsection A.*

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

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

613 *I. For purposes of this section:*

- 614 *"Gas utility" has the same meaning as provided in § 56-235.8.*  
615 *"Pipeline distribution company" has the same meaning as provided in § 58.1-2600.*  
616 *"Class of consumers" means a category of consumers served under a rate schedule established by*  
617 *the pipeline distribution company and approved by the State Corporation Commission.*  
618 **2. That the amendments to §§ 58.1-3731 and 58.1-3814 shall take effect on January 1, 2001, and**  
619 **the amendments to §§ 58.1-2626 and 58.1-2660, as they shall become effective, and § 58.1-2627.1**  
620 **shall take effect on January 1, 2002.**  
621 **3. That the third enactment clause of Chapter 494 of the 1999 Acts of Assembly is repealed.**