

# VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

## CHAPTER 408

*An Act to amend and reenact §§ 56-1 and 56-1.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 56-1.2:1 and 56-232.2:1, relating to the regulation of electric vehicle charging services and pilot programs.*

[H 2105]

Approved March 23, 2011

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

**1. That §§ 56-1 and 56-1.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 56-1.2:1 and 56-232.2:1 as follows:**

§ 56-1. Definitions.

Whenever used in this title, unless the context requires a different meaning:

"Broadband connection," for purposes of this section, means a connection where transmission speeds exceed 200 kilobits per second in at least one direction.

"Commission" means the State Corporation Commission.

"Corporation" or "company" includes all corporations created by acts of the General Assembly of Virginia, or under the general incorporation laws of this Commonwealth, or doing business therein, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth.

*"Electric vehicle charging service" means the replenishment of the battery of a plug-in electric motor vehicle, which replenishment occurs by plugging the motor vehicle into an electric power source in order to charge or recharge its battery.*

"Interexchange telephone service" means telephone service between points in two or more exchanges that is not classified as local exchange telephone service. "Interexchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.

"Local exchange telephone service" means telephone service provided in a geographical area established for the administration of communication services and consists of one or more central offices together with associated facilities which are used in providing local exchange service. Local exchange service, as opposed to interexchange service, consists of telecommunications between points within an exchange or between exchanges which are within an area where customers may call at rates and charges specified in local exchange tariffs filed with the Commission. "Local exchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.

"Municipality" or "municipal corporation" shall include an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403.

"Person" includes individuals, partnerships, limited liability companies, and corporations.

*"Plug-in electric motor vehicle" means an on-road motor vehicle that draws propulsion using a traction battery that has at least four kilowatt hours of capacity, uses an external source of electric energy to charge or recharge the battery, has a gross vehicle weight of not more than 14,000 pounds, and meets any applicable emissions standards.*

"Public service corporation" or "public service company" includes gas, pipeline, electric light, heat, power and water supply companies, sewer companies, telephone companies, telegraph companies, and all persons authorized to transport passengers or property as a common carrier. "Public service corporation" or "public service company" shall not include (i) a municipal corporation, other political subdivision or public institution owned or controlled by the Commonwealth; however, if such an entity has obtained a certificate to provide services pursuant to § 56-265.4:4, then such entity shall be deemed to be a public service corporation or public service company and subject to the authority of the Commission with respect only to its provision of the services it is authorized to provide pursuant to such certificate; or (ii) any company described in subdivision (b)(10) of § 56-265.1.

"Railroad" includes all railroad or railway lines, whether operated by steam, electricity, or other motive power, except when otherwise specifically designated.

"Railroad company" includes any company, trustee or other person owning, leasing or operating a

railroad.

"Rate" means rate charged for any service rendered or to be rendered.

"Rate," "charge" and "regulation" include joint rates, joint charges and joint regulations, respectively.

"Transportation company" includes any railroad company, any company transporting express by railroad, and any ship or boat company.

"Virginia limited liability company" means (i) any limited liability company organized under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1, (ii) any entity that has become a limited liability company pursuant to Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9 of Title 13.1 or pursuant to conversion or domestication under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1, or (iii) any foreign limited liability company that is organized or is domesticated by filing articles of organization that meet the requirements of §§ 13.1-1003 and 13.1-1011 and include (a) the name of the foreign limited liability company immediately prior to the filing of the articles of organization; (b) the date on which and the jurisdiction in which the foreign limited liability company was first formed, organized, created or otherwise came into being; and (c) the jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the foreign limited liability company, or any equivalent thereto under applicable law, immediately prior to the filing of the articles of organization. With respect to an organization or domestication pursuant to clause (iii), the terms and conditions of a domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the foreign limited liability company in the conduct of its business or by applicable law other than the law of the Commonwealth, as appropriate, and the provisions governing the status, powers, obligations, and choice of law applicable under § 13.1-1010.3 shall apply to any limited liability company so domesticated or organized.

"Voice-over-Internet protocol service" or "VoIP service" means any service that: (i) enables real-time, two-way voice communications that originate or terminate from the user's location using Internet protocol or any successor protocol and (ii) uses a broadband connection from the user's location. This definition includes any such service that permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

§ 56-1.2. Persons not designated as public utility, public service corporation, etc.

The terms public utility, public service corporation, or public service company, as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) of this title, shall not refer to any:

1. Any person who owns or operates property and provides electricity, natural gas, water, or sewer service to residents or tenants on the property, provided that (i) the electricity, natural gas, water or sewer service provided to the residents or tenants is purchased by the person from a public utility, public service corporation, public service company, or person licensed by the Commission as a competitive provider of energy services, or a county, city or town, or other publicly regulated political subdivision or public body, (ii) the person or his agent charges to the resident or tenant on the property only that portion of the person's utility charges for the electricity, natural gas, water, or sewer service which is attributable to usage by the resident or tenant on the property, and additional service charges permitted by § 55-226.2, and (iii) the person maintains three years' billing records for such charges; or

2. Any person who is not a public service corporation and who provides electric vehicle charging service at retail. The ownership or operation of a facility at which electric vehicle charging service is sold, and the selling of electric vehicle charging service from that facility, does not render the person a public utility, public service corporation, or public service company as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) solely because of that sale, ownership, or operation.

§ 56-1.2:1. Retail sale of electricity in connection with the provision of electric vehicle charging service.

A. The provision of electric vehicle charging service by a person who is not a public utility, public service corporation, or public service company shall not constitute the retail sale of electricity if:

1. The electricity furnished in connection with the provision of electric vehicle charging service is used solely for transportation purposes; and

2. The person providing the electric vehicle charging service has procured the furnished electricity from the public utility that is authorized by the Commission to engage in the retail sale of electricity within the exclusive service territory in which the electric vehicle charging service is provided.

B. The provision of electric vehicle charging service shall:

1. Be a permitted electric utility activity of a certificated electric utility; and

2. Not affect the status as a public utility of a certificated public utility that provides such service.

§ 56-232.2:1. Regulation of electric vehicle charging service.

The Commission shall not regulate or prescribe the rates, charges, and fees for the provision of retail electric vehicle charging service provided by persons other than public service corporations. Sales of electricity by public utilities to persons who (i) are not public service corporations and (ii) provide electric vehicle charging service shall continue to be regulated by the Commission to the same extent as are other services provided by public utilities. The Commission may adopt regulations implementing this

*section.*

**2. That public utilities in the Commonwealth shall (i) evaluate options to develop and offer off-peak charging rates or other incentives to encourage owners of an electric vehicle to charge or recharge its battery during nonpeak times, when practical, and (ii) file copies of such evaluations with the State Corporation Commission. The State Corporation Commission shall make copies of the evaluations available to the public.**

**3. That the State Corporation Commission (the Commission) shall, notwithstanding § 56-234 of the Code of Virginia, be authorized to approve, after notice to all affected parties and opportunity for hearing, pilot programs conducted by public utilities, including programs offering special rates, contracts, or incentives to individual customers or classes of customers to determine the feasibility, and the implications for the public interest, of allowing public electric utilities to offer time-differentiated rates to users of electric motor vehicles to encourage charging of vehicles during nonpeak periods. Elements of the pilot programs may include voluntary load control options, rate structures with financial incentives, rebates, or other incentives that offset the cost of purchasing or installing electric vehicle charging equipment for users who elect nonpeak rate structures. Before approving such pilot programs, including special rates, contracts, and incentives, the Commission shall ensure that such action meets the provisions of subsection B of § 56-235.2 of the Code of Virginia and that such actions are necessary in order to acquire information which is or may be in furtherance of the public interest. An electric utility that participates in such an approved pilot program shall be entitled to recover annually the costs of its participation in any such pilot program conducted by the utility on or after January 1, 2011.**