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## HOUSE BILL NO. 2107

Offered January 12, 2011

Prefiled January 12, 2011

*A BILL to amend and reenact § 58.1-400.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-236.3, relating to reduced electricity rates to be charged to low-income residential customers; tax credit for utility revenue deficiency.*

Patrons—Armstrong, Abbott, Johnson and Morefield; Senators: Puckett and Reynolds

Referred to Committee on Commerce and Labor

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

**1. That § 58.1-400.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-236.3 as follows:**

*§ 56-236.3. Electric services rates for low-income residential customers; income tax credit.*

*A. As used in this section, unless the context requires a different meaning:*

*"Billing cycle" means a period of time during the course of which an electric utility either bills for or measures, by meter reading or any other means, the usage of its electric utility services by all of its customers a single time. An electric utility may elect whether it wishes to determine its billing cycles by date of measurement or by date of billing. An electric utility that employs 12 billing cycles per year shall be deemed to employ monthly billing cycles. An electric utility that employs more or fewer than 12 billing cycles per year shall be deemed to employ nonmonthly billing cycles. For an electric utility employing monthly billing cycles, a billing cycle identified by the name of a particular calendar month must include at least 12 days of that calendar month.*

*"Billing month" as applied:*

*1. To a utility employing nonmonthly billing cycles and to its customers means the calendar month to which that billing month correlates under subsection B; and*

*2. To a utility employing monthly billing cycles and to its customers means the period of customer usage reflected on any bill which, in the case of a utility with billing-date billing cycles, is issued during that particular monthly billing cycle or for which, in the case of a utility with measurement-date billing cycles, the measurement of usage is made during that particular monthly billing cycle.*

*"Eligible customer" means a residential utility customer receiving (i) supplemental security income (SSI) benefits under the program administered by the Social Security Administration, (ii) Temporary Assistance for Needy Families (TANF), or (iii) food stamps, if such food stamp recipients are 60 years of age or older.*

*"Utility" means an investor-owned electric utility subject to the jurisdiction of the Commission.*

*B. The Commission shall order each utility to offer eligible customers reduced rates applicable to electric service for the billing months of December, January, February, March, and April of each year, beginning with the billing month of December 2011. The reduced rate offered by each utility to its eligible customers shall be 20 percent less than the rate that would be applicable to such customers if they were not receiving any of the benefits described in clauses (i), (ii), or (iii) of the definition of "eligible customer" in subsection A.*

*C. A customer of a utility offering reduced rates shall be eligible to receive such rates for each of the billing months of December, January, February, March, and April that correlates to a calendar month during which that customer is an eligible customer, except as otherwise provided in this section. The correlation of billing months to calendar months of eligibility to participate in a qualifying program is as follows: (i) a December billing month correlates to the calendar month of November; (ii) a January billing month correlates to the calendar month of December; (iii) a February billing month correlates to the calendar month of January; (iv) a March billing month correlates to the calendar month of February; and (v) an April billing month correlates to the calendar month of March. No customer shall be eligible to receive the reduced rates until the billing month in which that customer applies for such rates. Before any individual may qualify to receive the reduced rates, the following requirements must be met:*

*1. The reduced rates shall apply only to current customers or to those persons who subsequently become customers of a utility in their own name. If an SSI, TANF, or food stamp recipient is living in a household that is served under the name of a person who is not an SSI, TANF, or food stamp recipient, that service may not be changed or have been changed after July 1, 2011, to the name of the SSI, TANF, or food stamp recipient in order to qualify for service under the reduced rates;*

*2. The burden of proving eligibility for the reduced rates shall be on the customer requesting such*

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59 rates; and

60 3. No customer who is a recipient of more than one of the forms of assistance described in clause  
61 (i), (ii), or (iii) of the definition of "eligible customer" in subsection A shall be eligible for more than  
62 one 20 percent discount for electric service during each billing month that said customer is eligible to  
63 receive the reduced rates.

64 D. The Department of Social Services shall adopt regulations establishing procedures (i) to inform  
65 persons receiving any of the forms of assistance that confer eligibility for the reduced rates about the  
66 availability of the reduced rates, (ii) to assist applicants for the reduced rates in proving their eligibility  
67 therefor, and (iii) to assist utilities in determining on a continuing basis the eligibility therefor of  
68 persons receiving or applying for such rates.

69 E. The Commission shall adopt regulations establishing procedures for the application for and  
70 provision of service under the reduced rates and for the determination and certification of revenue  
71 deficiencies resulting from the reduced rates.

72 F. The Commission shall each year, beginning in 2012, determine, upon application by any affected  
73 utility, the amount of the utility's revenue deficiency that resulted in the previous year from the reduced  
74 rates. Upon determining any utility's revenue deficiency, the Commission shall issue an order certifying  
75 the amount of that deficiency. An amount equal to 1.45 percent of the utility's certified revenue  
76 deficiency resulting from the reduced rates shall be allowed as a tax credit against the liability of the  
77 utility pursuant to the provisions of Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1. The tax  
78 credit shall not be refundable or transferable. If the amount of the credit exceeds the utility's liability  
79 under Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 for any year, the excess may be carried  
80 over for credit against income taxes in the next five taxable years until the total amount of the tax credit  
81 has been taken.

82 § 58.1-400.2. Taxation of electric suppliers, pipeline distribution companies, gas utilities, and gas  
83 suppliers.

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

88 B. Any electric supplier that operates as a cooperative and is exempt from income tax pursuant to  
89 § 501 of the Internal Revenue Code of 1986, shall be subject to tax at the tax rate set forth in  
90 § 58.1-400 on all modified net income derived from nonmember sales. Any gas supplier, pipeline  
91 distribution company or gas utility which has a taxable year that begins after January 1, 2001, but  
92 before January 1, 2002, shall also be subject to the provisions under subsection E.

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

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

96 "Electricity" is deemed tangible personal property for purposes of the corporate income tax pursuant  
97 to this article.

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

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

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

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

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

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

111 "Nonmember" means those customers which are not members.

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

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

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

117 E. 1. Any gas supplier, pipeline distribution company or gas utility which has a taxable year that  
118 begins after January 1, 2001, but before January 1, 2002, shall be required to file an income tax return  
119 as if a short taxable year has occurred covering the period beginning January 1, 2001, and ending on the  
120 last day prior to the beginning of the gas supplier's, pipeline distribution company's or gas utility's

121 taxable year pursuant to § 58.1-440 A.

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

126 *F. Any investor-owned electric supplier that incurs a revenue deficiency resulting from reduced rates*  
127 *shall be allowed a credit against any income tax imposed under this chapter as set forth in subsection F*  
128 *of § 56-236.3.*

129 **2. That expeditious implementation of the provisions of this act providing eligible residential**  
130 **utility customers reduced rates for the billing months of December 2011 through April 2012 shall**  
131 **be deemed to be an emergency situation pursuant to § 2.2-4011 of the Code of Virginia; therefore,**  
132 **to meet this emergency situation, the State Corporation Commission and Department of Social**  
133 **Services shall promulgate temporary emergency regulations to implement the provisions of this act**  
134 **to be effective by October 1, 2011, which temporary emergency regulations shall not be subject to**  
135 **the requirements of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia)**  
136 **except that they shall be filed with the Registrar of Regulations and published in the Virginia**  
137 **Register of Regulations in accordance with the provisions of subsection B of § 2.2-4031 of the Code**  
138 **of Virginia. These temporary regulations shall remain in effect until supplanted by permanent**  
139 **rules and regulations, which shall be adopted by the State Corporation Commission and**  
140 **Department of Social Services within 280 days of the effective date of this act.**