

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 338

An Act to amend and reenact §§ 55-226.2, 56-245.2, and 56-245.3 of the Code of Virginia, relating to energy submetering.

[H 1261]

Approved March 22, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-226.2, 56-245.2, and 56-245.3 of the Code of Virginia are amended and reenacted as follows:

§ 55-226.2. Energy submetering, energy allocation equipment, sewer and water submetering equipment, ratio utility billings systems.

A. Energy submetering equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing system may be used in a commercial or residential building *or campground* if clearly stated in the rental agreement or lease for the leased premises or dwelling unit. All energy submetering equipment and energy allocation equipment shall meet the requirements and standards established and enforced by the State Corporation Commission pursuant to § 56-245.3.

B. If energy submetering equipment, water and sewer submetering equipment, or energy allocation equipment is used in any building *or campground*, the owner, manager, or operator of the building *or campground* shall bill the tenant for electricity, natural gas or water and sewer for the same billing period as the utility serving the building *or campground*, unless the rental agreement or lease expressly provides otherwise. The owner, manager, or operator of the building *or campground* may charge and collect from the tenant additional service charges, including, but not limited to, monthly billing fees, account set-up fees or account move-out fees, to cover the actual costs of administrative expenses and billing charged to the building *or campground* owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the building *or campground* owner and the tenant in the rental agreement or lease. The building *or campground* owner may require the tenant to pay a late charge of up to \$5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section.

C. If a ratio utility billing system is used in any building *or campground*, in lieu of increasing the rent, the owner, manager, or operator of the building *or campground* may employ such a program that utilizes a mathematical formula for allocating, among the tenants in a building *or campground*, the actual or anticipated water, sewer, electrical, or natural gas billings billed to the building *or campground* owner from a third-party provider of the utility service. The owner, manager, or operator of the building *or campground* may charge and collect from the tenant additional service charges, including but not limited to monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses and billings charged to the building *or campground* owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the building *or campground* owner and the tenant in the rental agreement or lease. The building *or campground* owner may require the tenant to pay a late charge of up to \$5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section. The late charge shall be deemed rent as defined in § 55-248.4 if a ratio utility billing system is used in a residential multifamily dwelling unit subject to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.).

D. Energy allocation equipment shall be tested periodically by the owner, operator or manager of the building *or campground*. Upon the request by a tenant, the owner shall test the energy allocation equipment without charge. The test conducted without charge to the tenant shall not be conducted more frequently than once in a 24-month period for the same tenant. The tenant or his designated representative may be present during the testing of the energy allocation equipment. A written report of the results of the test shall be made to the tenant within 10 working days after the completion of the test.

E. The owner of any building *or campground* shall maintain adequate records regarding energy submetering equipment, water and sewer submetering equipment, energy allocation equipment, or a ratio utility billing system. A tenant may inspect and copy the records for the leased premises during reasonable business hours at a convenient location within the building *or campground*. The owner of the building *or campground* may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

F. Notwithstanding any enforcement action undertaken by the State Corporation Commission pursuant to its authority under § 56-245.3, tenants and owners shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by this section or § 56-245.3,

if applicable, to the same extent as such actions may be maintained for breach of other terms of the rental agreement or lease under Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of this title, if applicable. The use of energy submetering equipment, water and sewer submetering equipment, energy allocation equipment, or a ratio utility billing system is not within the jurisdiction of the Department of Agriculture and Consumer Services under Chapter 56 (§ 3.2-5600 et seq.) of Title 3.2.

G. As used in this section:

"Building" means all of the individual units served through the same utility-owned meter within a commercial or residential building that is defined in subsection A of § 56-245.2 as an apartment building or house, office building or shopping center.

"Campground" means the same as that term is defined in § 35.1-1.

"Campsite" means the same as that term is defined in § 35.1-1.

"Energy allocation equipment" has the same meaning ascribed to such term in subsection A of § 56-245.2.

"Energy submetering equipment" has the same meaning ascribed to "submetering equipment" in subsection A of § 56-245.2.

"Ratio utility billing system" means a program that utilizes a mathematical formula for allocating, among the tenants in a building *or campground*, the actual or anticipated water, sewer, electrical, or natural gas billings billed to the building *or campground* owner from a third-party provider of the utility service. Permitted allocation methods may include formulas based upon square footage, occupancy, number of bedrooms, or some other specific method agreed to by the building *or campground* owner and the tenant in the rental agreement or lease.

"Water and sewer submetering equipment" means equipment used to measure actual water or sewer usage in any dwelling unit or nonresidential rental unit, as defined in subsection A of § 56-245.2 *or campsite*, when such equipment is not owned or controlled by the utility or other provider of water or sewer service that provides service to the building in which the dwelling unit or nonresidential rental unit is located *or campground where the campsite is located*.

§ 56-245.2. Definitions.

A. When used in this article, unless expressly stated otherwise:

"Apartment house" means a building or buildings with the primary purpose of residential occupancy containing more than two dwelling units all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house includes residential condominiums and cooperatives, whether rented or owner occupied.

"Campground" means the same as the term is defined in § 35.1-1.

"Campsite" means that same as that term is defined in § 35.1-1.

"Dwelling unit" means a room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

"Energy allocation equipment" means any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any dwelling unit or nonresidential rental unit within an apartment house, office building or shopping center, *or campsite at a campground*.

"Nonresidential rental unit" means a room or rooms in which retail or commercial services, clerical work or professional duties are carried out.

"Office building" means a building or buildings containing more than two rental units which are rented primarily for retail, commercial or professional use, with rental paid at intervals of one month or longer.

"Owner-paid areas" means those areas for which the owner bears financial responsibility for energy costs which include but are not limited to areas outside individual residential or nonresidential units *or campsites* or in owner-occupied or ~~-shared~~ *owner-shared* areas such as maintenance shops, vacant units, meeting units, meeting rooms, offices, swimming pools, laundry rooms, or model apartments.

"Shopping center" means a building or buildings containing more than two stores which are rented primarily for commercial, retail or professional use.

"Submetering equipment" means equipment used to measure actual electricity or natural gas usage in any dwelling unit or nonresidential rental unit *or campsite* when such equipment is not owned or controlled by the electric or natural gas utility serving the apartment house, office building, ~~or~~ shopping center, *or campground* in which the dwelling unit or nonresidential rental unit *or campsite* is located.

B. Any building or buildings which qualify as an apartment house, office building, or shopping center shall not be excluded from § 56-245.3 because the apartment house, office building or shopping center contains a mixture of dwelling units and nonresidential rental units.

§ 56-245.3. Commission to promulgate regulations and standards.

A. Notwithstanding any law to the contrary, the Commission shall promulgate regulations and standards under which any owner, operator, or manager of an apartment house, office building ~~or~~, shopping center, *or campground*, which is not individually metered for electricity or gas for each dwelling unit ~~or~~, nonresidential rental unit, *or campsite* may install submetering equipment or energy allocation equipment for the purpose of fairly allocating (a) the cost of electrical or gas consumption for

each dwelling unit ~~or~~, nonresidential rental unit, *or campsite* and (b) electrical or gas demand and customer charges made by the utility. In addition to other appropriate safeguards for the tenant, the regulations shall require (i) that an apartment house, office building ~~or~~, shopping center, *or campground* owner shall not impose on the tenant any charges, over and above the cost per kilowatt hour, cubic foot or therm, plus demand and customer charges, where applicable, which are charged by the utility company to the owner, including any sales, local utility, or other taxes, if any, except that additional service charges permitted by § 55-226.2 may be collected to cover administrative costs and billing, and (ii) that the apartment house, office building ~~or~~, shopping center, *or campground* owner shall maintain adequate records regarding submetering and energy allocation equipment and shall make such records available for inspection by the Commission during reasonable business hours. The provisions of this section shall not restrict the right of the owner, operator or manager to recover in periodic lease payments the tenant's fair share of electricity or gas costs attributable to owner-paid areas and costs incurred by the owner, operator or manager in establishing and maintaining the submetering or energy allocation equipment.

B. Only for purposes of Commission enforcement of the regulations adopted under this section, the owners, operators, or managers of apartment houses, office buildings ~~or~~, shopping centers, *or campgrounds* included within the purview of this article shall be treated as public service corporations under §§ 56-5, 56-6 and 56-7. All submetering equipment shall be subject to the same regulations and standards established by the Commission for accuracy, testing, and record keeping of meters installed by electric or gas utilities and shall be subject to the meter requirements of § 56-245.1. All energy allocation equipment shall be subject to regulations and standards established by the Commission to ensure that such systems result in a reasonable determination of energy use and the resulting costs for each dwelling unit ~~or~~, nonresidential rental unit, *or campsite*. Violations of Commission regulations and orders issued under this section shall be subject to the penalty set forth in § 12.1-33.

C. In implementing this section, no apartment house, office building ~~or~~, shopping center, *or campground* shall be considered a public utility or public service corporation engaged in the business of distributing or reselling electricity or gas except as provided in subsection B ~~of this section~~. The apartment house, office building ~~or~~, shopping center, *or campground* may use submetering or energy allocation equipment solely to allocate the costs of electric or gas service fairly among the tenants using the apartment house, office building ~~or~~, shopping center, *or campground*.