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HOUSE BILL NO. 103

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance
on January 16, 2012)

(Patron Prior to Substitute—Delegate Loupassi)

A *BILL to amend and reenact § 58.1-3814 of the Code of Virginia, relating to consumer utility tax; exemption for electric generation facilities.*

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3814 of the Code of Virginia is amended and reenacted as follows:

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

A. Any county, city or town may impose a tax on the consumers of the utility service or services provided by any water or heat, light and power company or other corporations coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.) ~~of this title~~, which tax shall not be imposed at a rate in excess of 20 percent of the monthly amount charged to consumers of the utility service and shall not be applicable to any amount so charged in excess of \$15 per month for residential customers. Any city, town or county that on July 1, 1972, imposed a utility consumer tax in excess of limits specified herein may continue to impose such a tax in excess of such limits, but no more. For taxable years beginning on and after January 1, 2001, any tax imposed by a county, city or town on consumers of electricity shall be imposed pursuant to subsections C through J ~~of this section~~ only.

B. Any tax enacted pursuant to the provisions of this section, or any change in a tax or structure already in existence, shall not be effective until 60 days subsequent to written notice by certified mail from the county, city or town imposing such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.

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

Any county, city or town may provide for an exemption from the tax for any public safety answering point as defined in § 58.1-3813.1.

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

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

E. The tax authorized by this section shall not apply to ~~utility~~:

1. *Utility sales of products used as motor vehicle fuels; or*

2. *Natural gas used to generate electricity by a public utility as defined in § 56-265.1 or an electric cooperative as defined in § 56-231.15.*

F.1. Any county, city or town may impose a tax on consumers of electricity provided by electric suppliers as defined in § 58.1-400.2.

The tax so imposed shall be based on kilowatt hours delivered monthly to consumers, and shall not exceed the limits set forth in this subsection. The provider of billing services shall bill the tax to all users who are subject to the tax and to whom it bills for electricity service, and shall remit such tax to the appropriate locality in accordance with § 58.1-2901. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of electricity shall convert its tax to a tax based on kilowatt hours delivered monthly to consumers, taking into account minimum billing charges. The kilowatt hour tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among electricity consumer classes and (ii) maintain annual

60 revenues being received by localities from such tax at the time of the conversion. The current service
61 provider shall provide to localities no later than August 1, 2000, information to enable localities to
62 convert their tax. The maximum amount of tax imposed on residential consumers as a result of the
63 conversion shall be limited to \$3 per month, except any locality that imposed a higher maximum tax on
64 July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount
65 no higher than the maximum tax in effect prior to January 1, 2001, as converted to kilowatt hours. For
66 nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be
67 based on the annual amount of revenue received from each class of nonresidential consumers in calendar
68 year 1999 for the kilowatt hours used that year. Kilowatt hour tax rates imposed on nonresidential
69 consumers shall be based at a class level on such factors as existing minimum charges, the amount of
70 kilowatt hours used, and the amount of consumer utility tax paid in calendar year 1999 on the same
71 kilowatt hour usage. The limitations in this section on kilowatt hour rates for nonresidential consumers
72 shall not apply after January 1, 2004. On or before October 31, 2000, any locality imposing a tax on
73 consumers of electricity shall duly amend its ordinance under which such tax is imposed so that the
74 ordinance conforms to the requirements of subsections C through J of this section. Notice of such
75 amendment shall be provided to service providers in a manner consistent with subsection B of this
76 section except that "registered agent of the provider of billing services" shall be substituted for
77 "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of
78 this subsection shall not be effective before the first meter reading after December 31, 2000, prior to
79 which time the tax previously imposed by the locality shall be in effect.

80 2. For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible
81 customer-generators, as defined in § 56-594, those kilowatt hours supplied from the electric grid to such
82 customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such
83 customer-generators.

84 G. Until the consumer pays the tax to such provider of billing services, the tax shall constitute a debt
85 to the locality. If any consumer receives and pays for electricity but refuses to pay the tax on the bill
86 that is imposed by a locality, the provider of billing services shall notify the locality of the name and
87 address of such consumer. If any consumer fails to pay a bill issued by a provider of billing services,
88 including the tax imposed by a locality as stated thereon, the provider of billing services shall follow its
89 normal collection procedures with respect to the charge for electric service and the tax, and upon
90 collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge
91 for electric service and the tax and (ii) remit the tax portion to the appropriate locality. After the
92 consumer pays the tax to the provider of billing services, the taxes shall be deemed to be held in trust
93 by such provider of billing services until remitted to the localities.

94 H. Any county, city or town may impose a tax on consumers of natural gas provided by pipeline
95 distribution companies and gas utilities. The tax so imposed shall be based on CCF delivered monthly to
96 consumers and shall not exceed the limits set forth in this subsection. The pipeline distribution company
97 or gas utility shall bill the tax to all users who are subject to the tax and to whom it delivers gas and
98 shall remit such tax to the appropriate locality in accordance with § 58.1-2905. Any locality that
99 imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount
100 charged to consumers of gas shall convert to a tax based on CCF delivered monthly to consumers,
101 taking into account minimum billing charges. The CCF tax rates shall, to the extent practicable: (i)
102 avoid shifting the amount of the tax among gas consumer classes and (ii) maintain annual revenues
103 being received by localities from such tax at the time of the conversion. Current pipeline distribution
104 companies and gas utilities shall provide to localities not later than August 1, 2000, information to
105 enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as
106 a result of the conversion shall be limited to \$3 per month, except any locality that imposed a higher
107 maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential
108 consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as
109 converted to CCF. For nonresidential consumers, the initial maximum rate of tax imposed as a result of
110 the conversion shall be based on the annual amount of revenue received and due from each of the
111 nonresidential gas purchase and gas transportation classes in calendar year 1999 for the CCF used that
112 year. CCF tax rates imposed on nonresidential consumers shall be based at a class level on such factors
113 as existing minimum charges, the amount of CCF used, and the amount of consumer utility tax paid and
114 due in calendar year 1999 on the same CCF usage. The initial maximum rate of tax imposed under this
115 section shall continue, unless lowered, until December 31, 2003. Beginning January 1, 2004, nothing in
116 this section shall be construed to prohibit or limit any locality from imposing a consumer utility tax on
117 nonresidential customers up to the amount authorized by subsection A.

118 On or before October 31, 2000, any locality imposing a tax on consumers of gas shall duly amend
119 its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of
120 subsections C through J of this section. Notice of such amendment shall be provided to pipeline
121 distribution companies and gas utilities in a manner consistent with subsection B except that "registered

agent of the pipeline distribution company or gas utility" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.

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

J. For purposes of this section:

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

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

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

"Service provider" and "provider of billing services" have the same meanings as provided in subsection E of § 58.1-2901, and "class" of consumers means a category of consumers defined as a class by their service provider.

K. Nothing in this section shall prohibit a locality from enacting an ordinance or other local law to allow such locality to impose a tax on consumers of natural gas provided by pipeline distribution companies and gas utilities, beginning at such time as natural gas service is first made available in such locality. The maximum amount of tax imposed on residential consumers based on CCF delivered monthly to consumers shall not exceed \$3 per month. The maximum tax rate imposed by such locality on nonresidential consumers based on CCF delivered monthly to consumers shall not exceed an average of the tax rates on nonresidential consumers of natural gas in effect (at the time natural gas service is first made available in such locality) in localities whose residents are being provided natural gas from the same pipeline distribution company or gas utility or both that is also providing natural gas to the residents of such locality. Beginning January 1, 2004, the tax rates for residential and nonresidential consumers of natural gas in such locality shall be determined in accordance with the provisions of subsection H.

2. That the provisions of this act shall not affect the interpretation of any statute as it was in effect prior to July 1, 2012, as it relates to any case or matter arising under the laws of the Commonwealth.