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**HOUSE BILL NO. 822**

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Commerce and Labor  
on February 4, 2014)

(Patron Prior to Substitute—Delegate Lopez)

*A BILL to amend and reenact § 56-585.2 of the Code of Virginia, relating to the regulation of electric utilities; renewable energy portfolio standard program.*

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

**1. That § 56-585.2 of the Code of Virginia is amended and reenacted as follows:**

**§ 56-585.2. Sale of electricity from renewable sources through a renewable energy portfolio standard program.**

A. As used in this section:

"Qualified investment" means an expense incurred in the Commonwealth by a participating utility in conducting, either by itself or in partnership with institutions of higher education in the Commonwealth or with industrial or commercial customers that have established renewable energy research and development programs in the Commonwealth, research and development activities related to renewable or alternative energy sources, which expense (i) is designed to enhance the participating utility's understanding of emerging energy technologies and their potential impact on and value to the utility's system and customers within the Commonwealth; (ii) promotes economic development within the Commonwealth; (iii) supplements customer-driven alternative energy or energy efficiency initiatives; (iv) supplements alternative energy and energy efficiency initiatives at state or local governmental facilities in the Commonwealth; or (v) is designed to mitigate the environmental impacts of renewable energy projects.

"Renewable energy" shall have the same meaning ascribed to it in § 56-576, provided such renewable energy is (i) generated in the Commonwealth or in the interconnection region of the regional transmission entity of which the participating utility is a member, as it may change from time to time, and purchased by a participating utility under a power purchase agreement; provided, however, that if such agreement was executed on or after July 1, 2013, the agreement shall expressly transfer ownership of renewable attributes, in addition to ownership of the energy, to the participating utility; (ii) generated by a public utility providing electric service in the Commonwealth from a facility in which the public utility owns at least a 49 percent interest and that is located in the Commonwealth, in the interconnection region of the regional transmission entity of which the participating utility is a member, or in a control area adjacent to such interconnection region; or (iii) represented by renewable energy certificates. "Renewable energy" shall not include electricity generated from pumped storage, but shall include run-of-river generation from a combined pumped-storage and run-of-river facility.

"Renewable energy certificate" means either (i) a certificate issued by an affiliate of the regional transmission entity of which the participating utility is a member, as it may change from time to time, or any successor to such affiliate, and held or acquired by such utility, that validates the generation of renewable energy by eligible sources in the interconnection region of the regional transmission entity or (ii) a certificate issued by the Commission pursuant to subsection J and held or acquired by a participating utility, that validates a qualified investment made by the participating utility.

"Total electric energy sold in the base year" means total electric energy sold to Virginia jurisdictional retail customers by a participating utility in calendar year 2007, excluding an amount equivalent to the average of the annual percentages of the electric energy that was supplied to such customers from nuclear generating plants for the calendar years 2004 through 2006.

B. Any investor-owned incumbent electric utility may apply to the Commission for approval to participate in a renewable energy portfolio standard program, as defined in this section. The Commission shall approve such application if the applicant demonstrates that it has a reasonable expectation of achieving 12 percent of its base year electric energy sales from renewable energy sources during calendar year 2022, and 15 percent of its base year electric energy sales from renewable energy sources during calendar year 2025, as provided in subsection D.

C. It is in the public interest for utilities that seek to have a renewable energy portfolio standard program to achieve the goals set forth in subsection D, such goals being referred to herein as "RPS Goals." A utility shall receive double credit toward meeting the renewable energy portfolio standard for energy derived from sunlight, from onshore wind, or from facilities in the Commonwealth fueled primarily by animal waste, and triple credit toward meeting the renewable energy portfolio standard for energy derived from offshore wind.

D. Regarding any renewable energy portfolio standard program, the total electric energy sold by a utility to meet the RPS Goals shall be composed of the following amounts of electric energy or

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60 renewable thermal energy equivalent from renewable energy sources, as adjusted for any sales volumes  
61 lost through operation of the customer choice provisions of subdivision A 3 or A 4 of § 56-577:

62 RPS Goal I: In calendar year 2010, 4 percent of total electric energy sold in the base year.

63 RPS Goal II: For calendar years 2011 through 2015, inclusive, an average of 4 percent of total  
64 electric energy sold in the base year, and in calendar year 2016, 7 percent of total electric energy sold in  
65 the base year.

66 RPS Goal III: For calendar years 2017 through 2021, inclusive, an average of 7 percent of total  
67 electric energy sold in the base year, and in calendar year 2022, 12 percent of total electric energy sold  
68 in the base year.

69 RPS Goal IV: For calendar years 2023 and 2024, inclusive, an average of 12 percent of total electric  
70 energy sold in the base year, and in calendar year 2025, 15 percent of total electric energy sold in the  
71 base year.

72 A utility may not apply renewable energy certificates issued pursuant to subsection J to meet more  
73 than 20 percent of the sales requirement for the RPS Goal in any year.

74 A utility may apply renewable energy sales achieved or renewable energy certificates acquired during  
75 the periods covered by any such RPS Goal that are in excess of the sales requirement for that RPS Goal  
76 to the sales requirements for any future RPS Goal *Goals in the five calendar years after the renewable*  
77 *energy was generated or the renewable energy certificates were created, except that a utility shall be*  
78 *able to apply renewable energy certificates acquired by the utility prior to January 1, 2014.*

79 E. A utility participating in such program shall have the right to recover all incremental costs  
80 incurred for the purpose of such participation in such program, as accrued against income, through rate  
81 adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1, including, but not limited to,  
82 administrative costs, ancillary costs, capacity costs, costs of energy represented by certificates described  
83 in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for  
84 funds used during construction until such time as an enhanced rate of return, as determined pursuant to  
85 subdivision A 6 of § 56-585.1, on construction work in progress is included in rates, projected  
86 construction work in progress, planning, development and construction costs, life-cycle costs, and costs  
87 of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to  
88 subdivision A 6 of § 56-585.1. This subsection shall not apply to qualified investments as provided in  
89 subsection K. All incremental costs of the RPS program shall be allocated to and recovered from the  
90 utility's customer classes based on the demand created by the class and within the class based on energy  
91 used by the individual customer in the class, except that the incremental costs of the RPS program shall  
92 not be allocated to or recovered from customers that are served within the large industrial rate classes of  
93 the participating utilities and that are served at primary or transmission voltage.

94 F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable  
95 energy from existing renewable energy sources owned by the participating utility or purchased as  
96 allowed by contract at no additional cost to customers to the extent feasible. A utility participating in  
97 such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable to  
98 any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007,  
99 that is operated by a person that is served within a utility's large industrial rate class and that is served  
100 at primary or transmission voltage, except for those persons providing renewable thermal energy  
101 equivalents to the utility. A participating utility shall be required to fulfill any remaining deficit needed  
102 to fulfill its RPS Goals from new renewable energy supplies at reasonable cost and in a prudent manner  
103 to be determined by the Commission at the time of approval of any application made pursuant to  
104 subsection B. A participating utility may sell renewable energy certificates produced at its own  
105 generation facilities located in the Commonwealth or, if located outside the Commonwealth, owned by  
106 such utility and in operation as of January 1, 2010, or renewable energy certificates acquired as part of a  
107 purchase power agreement, to another entity and purchase lower cost renewable energy certificates and  
108 the net difference in price between the renewable energy certificates shall be credited to customers.  
109 Utilities participating in such program shall collectively, either through the installation of new generating  
110 facilities, through retrofit of existing facilities or through purchases of electricity from new facilities  
111 located in Virginia, use or cause to be used no more than a total of 1.5 million tons per year of green  
112 wood chips, bark, sawdust, a tree or any portion of a tree which is used or can be used for lumber and  
113 pulp manufacturing by facilities located in Virginia, towards meeting RPS goals, excluding such fuel  
114 used at electric generating facilities using wood as fuel prior to January 1, 2007. A utility with an  
115 approved application shall be allocated a portion of the 1.5 million tons per year in proportion to its  
116 share of the total electric energy sold in the base year, as defined in subsection A, for all utilities  
117 participating in the RPS program. A utility may use in meeting RPS goals, without limitation, the  
118 following sustainable biomass and biomass based waste to energy resources: mill residue, except wood  
119 chips, sawdust and bark; pre-commercial soft wood thinning; slash; logging and construction debris;  
120 brush; yard waste; shipping crates; dunnage; non-merchantable waste paper; landscape or right-of-way  
121 tree trimmings; agricultural and vineyard materials; grain; legumes; sugar; and gas produced from the

122 anaerobic decomposition of animal waste.

123 G. The Commission shall promulgate such rules and regulations as may be necessary to implement  
124 the provisions of this section including a requirement that participants verify whether the RPS goals are  
125 met in accordance with this section.

126 H. Each investor-owned incumbent electric utility shall report to the Commission annually by  
127 November 1 identifying:

128 1. The utility's efforts, if any, to meet the RPS Goals, specifically identifying:

129 a. A list of all states where the purchased or owned renewable energy was generated, specifying the  
130 number of megawatt hours or renewable energy certificates originating from each state;

131 b. A list of the decades in which the purchased or owned renewable energy generating units were  
132 placed in service, specifying the number of megawatt hours or renewable energy certificates originating  
133 from those units; and

134 c. A list of fuel types used to generate the purchased or owned renewable energy, specifying the  
135 number of megawatt hours or renewable energy certificates originating from each fuel type;

136 2. The utility's overall generation of renewable energy; and

137 3. Advances in renewable generation technology that affect activities described in subdivisions 1 and  
138 2.

139 I. The Commission shall post on its website the reports submitted by each investor-owned incumbent  
140 electric utility pursuant to subsection H.

141 J. The Commission shall issue to a participating utility a number of renewable energy certificates for  
142 qualified investments, upon request by a participating utility, if it finds that an expense satisfies the  
143 conditions set forth in this section for a qualified investment, as follows:

144 1. By March 31 of each year, the participating utility shall provide an analysis, as reasonably  
145 determined by a qualified independent broker, of the average for the preceding year of the publicly  
146 available prices for Tier 1 renewable energy certificates and Tier 2 renewable energy certificates,  
147 validating the generation of renewable energy by eligible sources, that were issued in the interconnection  
148 region of the regional transmission entity of which the participating utility is a member;

149 2. In the same annual analysis provided to the Commission, the participating utility shall divide the  
150 amount of the participating utility's qualified investments in the applicable period by the average price  
151 determined pursuant to subdivision 1;

152 3. The number of renewable energy certificates to be issued to the participating utility shall equal the  
153 product obtained pursuant to subdivision 2; and

154 4. The Commission shall review and validate the analysis provided by the participating utility within  
155 90 days of submittal of its analysis to the Commission. If no corrections are made by the Commission,  
156 then the analysis shall be deemed correct and the renewable energy certificates shall be deemed issued  
157 to the participating utility.

158 Each renewable energy certificate issued to a participating utility pursuant to this subsection shall  
159 represent the equivalent of one megawatt hour of renewable energy sales achieved when applied to an  
160 RPS Goal.

161 K. Qualified investments shall constitute reasonable and prudent operating expenses of a participating  
162 utility. Notwithstanding subsection E, a participating utility shall not be authorized to recover the costs  
163 associated with qualified investments through rate adjustment clauses as provided in subdivisions A 5  
164 and A 6 of § 56-585.1. In any proceeding conducted pursuant to § 56-585.1 or other provision of this  
165 title in which a participating utility seeks recovery of its qualified investments as an operating expense,  
166 the participating utility shall not be authorized to earn a return on its qualified investments.

167 L. A participating utility shall not be eligible for a research and development tax credit pursuant to  
168 § 58.1-439.12:08 with regard to any expense incurred or investment made by the participating utility that  
169 constitutes a qualified investment pursuant to this section.