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## SENATE BILL NO. 1197

Offered January 11, 2017

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A BILL to amend and reenact §§ 10.1-1197.8, 56-46.1, and 56-580 of the Code of Virginia, relating to State Corporation Commission; approval process for certain small renewable energy projects.

Patron—Deeds

Referred to Committee on Commerce and Labor

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

**1. That §§ 10.1-1197.8, 56-46.1, and 56-580 of the Code of Virginia are amended and reenacted as follows:**

**§ 10.1-1197.8. Limitation of State Corporation Commission authority.**

A. If the owner or operator of a small renewable energy project to whom the Department has authorized a permit by rule pursuant to this article is not a utility regulated pursuant to Title 56, then the State Corporation Commission shall not have jurisdiction, *unless the small renewable energy project either (i) will disturb an area of 100 acres or more or (ii) is located within five miles of a boundary between the political subdivision in which such project is located and another locality*, to review the small renewable energy project or to condition the construction or operation of a small renewable energy project upon the State Corporation Commission's issuance of any permit or certificate under any provision of Title 56, provided that the State Corporation Commission shall retain jurisdiction to resolve requests for joint use of the rights of way of public service corporations pursuant to § 56-259 and denials of requests for interconnection of facilities pursuant to § 56-578.

B. If the owner or operator of a small renewable energy project to whom the Department has authorized a permit by rule pursuant to this article is a utility regulated pursuant to Title 56, such small renewable energy project shall be exempt from any provision of § 56-46.1 and any corresponding provision of subsection D of § 56-580 or Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 that requires environmental review and permitting by the State Corporation Commission, *unless the small renewable energy project either (i) will disturb an area of 100 acres or more or (ii) is located within five miles of a boundary between the political subdivision in which such project is located and another locality*. An operator of a small renewable energy project that is a utility regulated pursuant to Title 56 shall nonetheless be required to obtain a certificate of public convenience and necessity pursuant to subsection D of § 56-580.

**§ 56-46.1. Commission to consider environmental, economic and improvements in service reliability factors in approving construction of electrical utility facilities; approval required for construction of certain electrical transmission lines; notice and hearings.**

A. Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (a) shall consider the

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59 effect of the proposed facility on economic development within the Commonwealth, including but not  
60 limited to furtherance of the economic and job creation objectives of the Commonwealth Energy Policy  
61 set forth in §§ 67-101 and 67-102, and (b) shall consider any improvements in service reliability that  
62 may result from the construction of such facility.

63 B. Subject to the provisions of subsection J, no electrical transmission line of 138 kilovolts or more  
64 shall be constructed unless the State Corporation Commission shall, after at least 30 days' advance  
65 notice by (i) publication in a newspaper or newspapers of general circulation in the counties and  
66 municipalities through which the line is proposed to be built, (ii) written notice to the governing body of  
67 each such county and municipality, and (iii) causing to be sent a copy of the notice by first class mail to  
68 all owners of property within the route of the proposed line, as indicated on the map or sketch of the  
69 route filed with the Commission, which requirement shall be satisfied by mailing the notice to such  
70 persons at such addresses as are indicated in the land books maintained by the commissioner of revenue,  
71 director of finance or treasurer of the county or municipality, approve such line. Such notices shall  
72 include a written description of the proposed route the line is to follow, as well as a map or sketch of  
73 the route including a digital geographic information system (GIS) map provided by the public utility  
74 showing the location of the proposed route. The Commission shall make GIS maps provided under this  
75 subsection available to the public on the Commission's website. Such notices shall be in addition to the  
76 advance notice to the chief administrative officer of the county or municipality required pursuant to  
77 § 15.2-2202. As a condition to approval the Commission shall determine that the line is needed and that  
78 the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets,  
79 historic districts and environment of the area concerned. To assist the Commission in this determination,  
80 as part of the application for Commission approval of the line, the applicant shall summarize its efforts  
81 to reasonably minimize adverse impact on the scenic assets, historic districts, and environment of the  
82 area concerned. In making the determinations about need, corridor or route, and method of installation,  
83 the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability  
84 needs presented to justify the new line and its proposed method of installation. If the local  
85 comprehensive plan of an affected county or municipality designates corridors or routes for electric  
86 transmission lines and the line is proposed to be constructed outside such corridors or routes, in any  
87 hearing the county or municipality may provide adequate evidence that the existing planned corridors or  
88 routes designated in the plan can adequately serve the needs of the company. Additionally, the  
89 Commission shall consider, upon the request of the governing body of any county or municipality in  
90 which the line is proposed to be constructed, (a) the costs and economic benefits likely to result from  
91 requiring the underground placement of the line and (b) any potential impediments to timely  
92 construction of the line.

93 C. If, prior to such approval, any interested party shall request a public hearing, the Commission  
94 shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as  
95 may be designated by the Commission. In any hearing the public service company shall provide  
96 adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.

97 If, prior to such approval, written requests therefor are received from the governing body of any  
98 county or municipality through which the line is proposed to be built or from 20 or more interested  
99 parties, the Commission shall hold at least one hearing in the area that would be affected by  
100 construction of the line, for the purpose of receiving public comment on the proposal. If any hearing is  
101 to be held in the area affected, the Commission shall direct that a copy of the transcripts of any  
102 previous hearings held in the case be made available for public inspection at a convenient location in the  
103 area for a reasonable time before such local hearing.

104 D. As used in this section, unless the context requires a different meaning:

105 "Environment" or "environmental" shall be deemed to include in meaning "historic," as well as a  
106 consideration of the probable effects of the line on the health and safety of the persons in the area  
107 concerned.

108 "Interested parties" shall include the governing bodies of any counties or municipalities through  
109 which the line is proposed to be built, and persons residing or owning property in each such county or  
110 municipality.

111 "Public utility" means a public utility as defined in § 56-265.1.

112 "Qualifying facilities" means a cogeneration or small power production facility which meets the  
113 criteria of 18 C.F.R. Part 292.

114 "Reasonably accommodate requests to wheel or transmit power" means:

115 1. That the applicant will make available to new electric generation facilities constructed after  
116 January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total  
117 megawatts of the additional transmission capacity created by the proposed line, for the purpose of  
118 wheeling to public utility purchasers the power generated by such qualifying facilities and other  
119 nonutility facilities which are awarded a power purchase contract by a public utility purchaser in  
120 compliance with applicable state law or regulations governing bidding or capacity acquisition programs

for the purchase of electric capacity from nonutility sources, provided that the obligation of the applicant will extend only to those requests for wheeling service made within the 12 months following certification by the State Corporation Commission of the transmission line and with effective dates for commencement of such service within the 12 months following completion of the transmission line; and

2. That the wheeling service offered by the applicant, pursuant to subdivision D 1, will reasonably further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L. 95-617), as demonstrated by submitting to the Commission, with its application for approval of the line, the cost methodologies, terms, conditions, and dispatch and interconnection requirements the applicant intends, subject to any applicable requirements of the Federal Energy Regulatory Commission, to include in its agreements for such wheeling service.

E. In the event that, at any time after the giving of the notice required in subsection B, it appears to the Commission that consideration of a route or routes significantly different from the route described in the notice is desirable, the Commission shall cause notice of the new route or routes to be published and mailed in accordance with subsection B. The Commission shall thereafter comply with the provisions of this section with respect to the new route or routes to the full extent necessary to give affected localities and interested parties in the newly affected areas the same protection afforded to affected localities and interested parties affected by the route described in the original notice.

F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the requirements of § 15.2-2232 and local zoning ordinances with respect to such transmission line.

G. The Commission shall enter into a memorandum of agreement with the Department of Environmental Quality regarding the coordination of their reviews of the environmental impact of electric generating plants and associated facilities.

H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from the Commission for any electric generating facility, electric transmission line, natural or manufactured gas transmission line as defined in 49 Code of Federal Regulations § 192.3, or natural or manufactured gas storage facility (hereafter, an energy facility) and (ii) an environmental permit for the energy facility that is subject to issuance by any agency or board within the Secretariat of Natural Resources, may request a pre-application planning and review process. In any such request to the Commission or the Secretariat of Natural Resources, the applicant shall identify the proposed energy facility for which it requests the pre-application planning and review process. The Commission, the Department of Environmental Quality, the Marine Resources Commission, the Department of Game and Inland Fisheries, the Department of Historic Resources, the Department of Conservation and Recreation, and other appropriate agencies of the Commonwealth shall participate in the pre-application planning and review process. Participation in such process shall not limit the authority otherwise provided by law to the Commission or other agencies or boards of the Commonwealth. The Commission and other participating agencies of the Commonwealth may invite federal and local governmental entities charged by law with responsibility for issuing permits or approvals to participate in the pre-application planning and review process. Through the pre-application planning and review process, the applicant, the Commission, and other agencies and boards shall identify the potential impacts and approvals that may be required and shall develop a plan that will provide for an efficient and coordinated review of the proposed energy facility. The plan shall include (a) a list of the permits or other approvals likely to be required based on the information available, (b) a specific plan and preliminary schedule for the different reviews, (c) a plan for coordinating those reviews and the related public comment process, and (d) designation of points of contact, either within each agency or for the Commonwealth as a whole, to facilitate this coordination. The plan shall be made readily available to the public and shall be maintained on a dedicated website to provide current information on the status of each component of the plan and each approval process including opportunities for public comment.

I. The provisions of this section shall not apply to the construction and operation of a small renewable energy project, as defined in § 10.1-1197.5, by a utility regulated pursuant to this title for which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1, *unless the small renewable energy project either (i) will disturb an area of 100 acres or more or (ii) is located within five miles of a boundary between the political subdivision in which such project is located and another locality.*

J. Approval under this section shall not be required for any transmission line for which a certificate of public convenience and necessity is not required pursuant to subdivision A of § 56-265.2.

**§ 56-580. Transmission and distribution of electric energy.**

A. Subject to the provisions of § 56-585.1, the Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail

182 distribution systems.

183 C. The Commission shall develop codes of conduct governing the conduct of incumbent electric  
184 utilities and affiliates thereof when any such affiliates provide, or control any entity that provides,  
185 generation, distribution, or transmission services, to the extent necessary to prevent impairment of  
186 competition. Nothing in this chapter shall prevent an incumbent electric utility from offering metering  
187 options to its customers.

188 D. The Commission shall permit the construction and operation of electrical generating facilities in  
189 Virginia upon a finding that such generating facility and associated facilities (i) will have no material  
190 adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are  
191 required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007,  
192 and if they are to be constructed and operated by any regulated utility whose rates are regulated  
193 pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest. In review of a petition  
194 for a certificate to construct and operate a generating facility described in this subsection, the  
195 Commission shall give consideration to the effect of the facility and associated facilities on the  
196 environment and establish such conditions as may be desirable or necessary to minimize adverse  
197 environmental impact as provided in § 56-46.1, unless exempt as a small renewable energy project *that*  
198 *will neither (a) disturb an area of 100 acres or more nor (b) be located within five miles of a boundary*  
199 *between the political subdivision in which such project is located and another locality* for which the  
200 Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et  
201 seq.) of Chapter 11.1 of Title 10.1. In order to avoid duplication of governmental activities, any valid  
202 permit or approval required for an electric generating plant and associated facilities issued or granted by  
203 a federal, state or local governmental entity charged by law with responsibility for issuing permits or  
204 approvals regulating environmental impact and mitigation of adverse environmental impact or for other  
205 specific public interest issues such as building codes, transportation plans, and public safety, whether  
206 such permit or approval is prior to or after the Commission's decision, shall be deemed to satisfy the  
207 requirements of this section with respect to all matters that ~~(i)~~ (1) are governed by the permit or  
208 approval or ~~(ii)~~ (2) are within the authority of, and were considered by, the governmental entity in  
209 issuing such permit or approval, and the Commission shall impose no additional conditions with respect  
210 to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of  
211 a case open. Nothing in this section shall affect any right to appeal such permits or approvals in  
212 accordance with applicable law. In the case of a proposed facility located in a region that was  
213 designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in  
214 the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility  
215 that is conditioned upon issuance of any environmental permit or approval. The Commission shall  
216 complete any proceeding under this section, or under any provision of the Utility Facilities Act  
217 (§ 56-265.1 et seq.), involving an application for a certificate, permit, or approval required for the  
218 construction or operation by a public utility of a small renewable energy project as defined in  
219 § 10.1-1197.5 *that will neither disturb an area of 100 acres or more nor be located within five miles of*  
220 *a boundary between the political subdivision in which such project is located and another locality,*  
221 within nine months following the utility's submission of a complete application therefore. Small  
222 renewable energy projects as defined in § 10.1-1197.5 *that will neither disturb an area of 100 acres or*  
223 *more nor be located within five miles of a boundary between the political subdivision in which such*  
224 *project is located and another locality* are in the public interest and in determining whether to approve  
225 such project, the Commission shall liberally construe the provisions of this title.

226 E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric  
227 utilities, and incumbent electric utilities shall continue to provide distribution services within their  
228 exclusive service territories as established by the Commission. Subject to the provisions of § 56-585.1,  
229 the Commission shall continue to exercise its existing authority over the provision of electric distribution  
230 services to retail customers in the Commonwealth including, but not limited to, the authority contained  
231 in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

232 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or  
233 operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt  
234 from the referendum requirement of § 15.2-5403. Nor shall any provision of this chapter apply to any  
235 such electric utility unless (i) that municipality or that authority created by a governmental unit exempt  
236 from the referendum requirement of § 15.2-5403 elects to have this chapter apply to that utility or (ii)  
237 that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail  
238 customer eligible to purchase electric energy from any supplier in accordance with § 56-577 if that retail  
239 customer is outside the geographic area that was served by such municipality as of July 1, 1999, except  
240 (a) any area within the municipality that was served by an incumbent public utility as of that date but  
241 was thereafter served by an electric utility owned or operated by a municipality or by an authority  
242 created by a governmental unit exempt from the referendum requirement of § 15.2-5403 pursuant to the  
243 terms of a franchise agreement between the municipality and the incumbent public utility, or (b) where

the geographic area served by an electric utility owned or operated by a municipality is changed pursuant to mutual agreement between the municipality and the affected incumbent public utility in accordance with § 56-265.4:1. If an electric utility owned or operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any such utility, mutatis mutandis.

G. The applicability of all provisions of this chapter except § 56-594 to any investor-owned incumbent electric utility supplying electric service to retail customers on January 1, 2003, whose service territory assigned to it by the Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties shall be suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any other service territory in any jurisdiction to customers who have the right to receive retail electric energy from another supplier. During any such suspension period, the utility's rates shall be (i) its capped rates established pursuant to § 56-582 for the duration of the capped rate period established thereunder, and (ii) determined thereafter by the Commission on the basis of such utility's prudently incurred costs pursuant to Chapter 10 (§ 56-232 et seq.) of this title.

H. The expiration date of any certificates granted by the Commission pursuant to subsection D, for which applications were filed with the Commission prior to July 1, 2002, shall be extended for an additional two years from the expiration date that otherwise would apply.