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SENATE BILL NO. 1166

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 2, 2023)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact §§ 30-202 through 30-206, 30-209, 45.2-1711, 45.2-1712, 45.2-1713, and 56-599 of the Code of Virginia, relating to energy planning and electric utility oversight; Commission on Electricity Utility Regulation; membership, meetings, powers and duties, and staffing; Virginia Energy Plan; public presentation of plan draft; electric utilities; integrated resource plans; stakeholder groups and public outreach required.

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-202 through 30-206, 30-209, 45.2-1711, 45.2-1712, 45.2-1713, and 56-599 of the Code of Virginia are amended and as follows:

§ 30-202. (Expires July 1, 2024) **Membership; terms.**

The Commission shall consist of ~~10 legislative~~ 13 members that include 10 legislative members and three nonlegislative citizen members. Members shall be appointed as follows: four members of the Senate to be appointed by the Senate Committee on Rules ~~and that consist of three members from the majority party and one member from the minority party or an equal number from each in the event the chamber is evenly divided~~; six members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; ~~one nonlegislative citizen member with expertise in economic development to be appointed by the Senate Committee on Rules; one nonlegislative citizen member with expertise in energy affordability to be appointed by the Speaker of the House of Delegates; and one nonlegislative citizen member with expertise in public utility regulation to be appointed by the Governor.~~ Nonlegislative citizen members of the Commission shall be citizens of the Commonwealth. Any member of the Commission appointed on or after July 1, 2023, shall complete within 90 days of his appointment an orientation on electric utility regulation provided by the State Corporation Commission.

~~Members~~ Legislative members of the Commission shall serve terms coincident with their terms of office. Nonlegislative citizen members shall be appointed for a term of two years. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

The Commission shall elect a chairman and vice-chairman from among its membership, *who shall be members of the General Assembly*. The chairman of the Commission shall be authorized to designate one or more members of the Commission to observe and participate in the discussions of any work group convened by the State Corporation Commission in furtherance of its duties under the Virginia Electric Utility Regulation Act (§ 56-576 et seq.) and this chapter. Members participating in such discussions shall be entitled to compensation and reimbursement provided in § 30-204, if approved by the Joint Rules Committee or its Budget Oversight Subcommittee.

§ 30-203. (Expires July 1, 2024) **Quorum; meetings; voting on recommendations.**

A majority of the members shall constitute a quorum. The Commission shall meet at least twice per year; meetings of the Commission shall be held at the call of the chairman or whenever the majority of the members so request.

No recommendation of the Commission shall be adopted if a majority of the Senate members or a majority of the House members appointed to the Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Commission.

§ 30-204. (Expires July 1, 2024) **Compensation; expenses.**

~~Members~~ Legislative members of the Commission shall receive such compensation as provided in § 30-19.12 and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. *Unless otherwise approved in writing by the chairman of the Commission and the executive director of the Commission, nonlegislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth for the purpose of attending meetings.* However, all such compensation and expenses shall be paid from existing appropriations to the Commission or, if unfunded, shall be approved by the Joint Rules Committee.

§ 30-205. (Expires July 1, 2024) **Powers and duties of the Commission.**

The Commission shall have the following powers and duties:

1. Monitor the work of the State Corporation Commission in implementing Chapter 23 (§ 56-576 et seq.) of Title 56, ~~receiving~~. The Commission shall receive an annual report from the State Corporation Commission by November 1 regarding such implementation and shall receive such other reports as the

Commission may be required to make ~~pursuant thereto~~, including reviews, analyses, and impact on consumers of electric utility regulation in other states;

2. Examine generation, transmission and distribution systems reliability concerns;

3. Establish one or more subcommittees, composed of its membership, persons with expertise in the matters under consideration by the Commission, or both, to meet at the direction of the chairman of the Commission, for any purpose within the scope of the duties prescribed to the Commission by this section, provided that such persons who are not members of the Commission shall serve without compensation but shall be entitled to be reimbursed from funds appropriated or otherwise available to the Commission for reasonable and necessary expenses incurred in the performance of their duties; ~~and~~

4. *Monitor applications by the Commonwealth for grants and awards for energy projects from the federal government;*

5. *Establish the Commonwealth Energy Research Consortium and distribute funds from the Commonwealth Energy Research Fund in accordance with the provisions of § 30-205.1;*

6. *Consider legislation referred to it during any session of the General Assembly or other requests by members of the General Assembly;*

7. *Conduct studies and gather information and data in order to accomplish its purposes set forth in § 30-201 and in connection with the faithful execution of the laws of the Commonwealth; and*

8. Report annually to the General Assembly and the Governor with such recommendations as may be appropriate for legislative and administrative consideration in order to maintain reliable service in the Commonwealth while preserving the Commonwealth's position as a low-cost electricity market.

§ 30-206. (Expires July 1, 2024) Staffing.

Administrative staff support shall be provided by the Office of the Clerk of the Senate or the Office of Clerk of the House of Delegates as may be appropriate for the house in which the chairman of the Commission serves. The Division of Legislative Services shall provide legal, research, policy analysis and other services as requested by the Commission. *The Commission may appoint, employ, and remove an executive director and such other persons as it deems necessary, subject to funding in the appropriation act, and shall determine the duties and fix the salaries or compensation of such executive director and other persons, within the amounts appropriated for such purpose. The Commission may also employ experts who have knowledge of the issues before it. All agencies of the Commonwealth shall provide assistance to the Commission, upon request, subject to funding in the appropriation act.*

§ 30-209. (Expires July 1, 2024) Sunset.

This chapter shall expire on July 1, 2024 2029.

§ 45.2-1711. Schedule for the Plan.

A. The Division shall complete the Plan.

B. Prior to the completion of the Plan and each update thereof, the Division shall, *at a public meeting*, present drafts to, and consult with, the Virginia Coal and Energy Commission established pursuant to Chapter 25 (§ 30-188 et seq.) of Title 30 and the Commission on Electric Utility Regulation established pursuant to Chapter 31 (§ 30-201 et seq.) of Title 30.

C. The Plan shall be updated by the Division and submitted as provided in § 45.2-1713 by October 1, 2014, and every fourth October 1 thereafter. In addition, the Division shall provide interim updates on the Plan by October 1 of the third year of each Governor's administration. Updated reports shall specify any progress attained toward each proposed action of the Plan, as well as reassess goals for energy conservation on the basis of progress to date in meeting the goals in the previous Plan and lessons learned from attempts to meet such goals.

D. Beginning with the Plan update in 2014, the Division shall include a section setting forth energy policy positions relevant to any potential regulations proposed or promulgated by the State Air Pollution Control Board to reduce carbon dioxide emissions from fossil fuel-fired electric generating units under § 111(d) of the federal Clean Air Act, 42 U.S.C. § 7411(d). In such section of the Plan, the Division shall address policy options for establishing separate standards of performance pursuant to § 111(d) of the federal Clean Air Act, 42 U.S.C. § 7411(d), for carbon dioxide emissions from existing fossil fuel-fired electric generating units to promote the Plan's overall goal of fuel diversity as follows:

1. The Plan shall address policy options for establishing the standards of performance for existing coal-fired electric generating units, including the following factors:

a. The most suitable system of emission reduction that (i) takes into consideration (a) the cost and benefit of achieving such reduction, (b) any non-air quality health and environmental impacts, and (c) the energy requirements of the Commonwealth and (ii) has been adequately demonstrated for coal-fired electric generating units that are subject to the standard of performance;

b. Reductions in emissions of carbon dioxide that can be achieved through measures reasonably undertaken at each coal-fired electric generating unit; and

c. Increased efficiencies and other measures that can be implemented at each coal-fired electric generating unit to reduce carbon dioxide emissions from the unit without converting from coal to other fuels, co-firing other fuels with coal, or limiting the utilization of the unit.

2. The Plan shall also address policy options for establishing the standards of performance for existing gas-fired electric generating units, including the following factors:

a. The application of the criteria specified in subdivisions 1 a and b to natural gas-fired electric generating units instead of to coal-fired electric generating units; and

b. Increased efficiencies and other measures that can be reasonably implemented at the unit to reduce carbon dioxide emissions from the unit without switching from natural gas to other lower-carbon fuels or limiting the utilization of the unit.

3. The Plan shall examine policy options for state regulatory action to adopt less stringent standards or longer compliance schedules than those provided for in applicable federal rules or guidelines based on analysis of the following:

a. Consumer impacts, including any disproportionate impacts of energy price increases on lower-income populations;

b. Unreasonable cost of reducing emissions resulting from plant age, location, or basic process design;

c. Physical difficulties with or impossibility of implementing emission reduction measures;

d. The absolute cost of applying the performance standard to the unit;

e. The expected remaining useful life of the unit;

f. The economic impacts of closing the unit, including expected job losses, if the unit is unable to comply with the performance standard; and

g. Any other factors specific to the unit that make application of a less stringent standard or longer compliance schedule more reasonable.

4. The Plan shall identify options, to the maximum extent permissible, for any federally required regulation of carbon dioxide emissions from existing fossil fuel-fired electric generating units and regulatory mechanisms that provide flexibility in complying with such standards, including the averaging of emissions, emissions trading, or other alternative implementation measures that are determined to further the interests of the Commonwealth and its citizens.

§ 45.2-1712. Annual reporting by investor-owned public utilities.

Each investor-owned public utility providing electric service in the Commonwealth shall prepare an annual report disclosing its efforts to conserve energy, including (i) its implementation of customer demand-side management programs and (ii) efforts by the utility to improve efficiency and conserve energy in its internal operations pursuant to § 56-235.1. The utility shall submit each annual report to the Division *and the Commission on Electric Utility Regulation* by November 1 of each year, and the Division shall compile the reports of the utilities and submit the compilation to the Governor and the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

§ 45.2-1713. Submission of the Plan.

Upon completion, the Division shall submit the Plan, including periodic updates thereto, to the Governor, the Commissioners of the State Corporation Commission, and the General Assembly *and shall present the Plan to the Commission on Electric Utility Regulation at a public meeting*. The Plan shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents. The Plan's executive summary shall be posted on the General Assembly's website.

§ 56-599. Integrated resource plan required.

A. Each electric utility shall file an updated integrated resource plan by July 1, 2015. Thereafter, each electric utility shall file an updated integrated resource plan by May 1, in each year immediately preceding the year the utility is subject to a triennial review filing. A copy of each integrated resource plan shall be provided to the Chairman of the House Committee on Labor and Commerce, the Chairman of the Senate Committee on Commerce and Labor, and to the Chairman of the Commission on Electric Utility Regulation. All updated integrated resource plans shall comply with the provisions of any relevant order of the Commission establishing guidelines for the format and contents of updated and revised integrated resource plans. Each integrated resource plan shall consider options for maintaining and enhancing rate stability, energy independence, economic development including retention and expansion of energy-intensive industries, and service reliability.

B. In preparing an integrated resource plan, each electric utility shall systematically evaluate and may propose:

1. Entering into short-term and long-term electric power purchase contracts;

2. Owning and operating electric power generation facilities;

3. Building new generation facilities;

4. Relying on purchases from the short term or spot markets;

5. Making investments in demand-side resources, including energy efficiency and demand-side management services;

183 6. Taking such other actions, as the Commission may approve, to diversify its generation supply
184 portfolio and ensure that the electric utility is able to implement an approved plan;

185 7. The methods by which the electric utility proposes to acquire the supply and demand resources
186 identified in its proposed integrated resource plan;

187 8. The effect of current and pending state and federal environmental regulations upon the continued
188 operation of existing electric generation facilities or options for construction of new electric generation
189 facilities;

190 9. The most cost effective means of complying with current and pending state and federal
191 environmental regulations, including compliance options to minimize effects on customer rates of such
192 regulations;

193 10. Long-term electric distribution grid planning and proposed electric distribution grid
194 transformation projects;

195 11. Developing a long-term plan for energy efficiency measures to accomplish policy goals of
196 reduction in customer bills, particularly for low-income, elderly, and disabled customers; reduction in
197 emissions; and reduction in carbon intensity; and

198 12. Developing a long-term plan to integrate new energy storage facilities into existing generation
199 and distribution assets to assist with grid transformation.

200 C. As part of preparing any integrated resource plan pursuant to this section, each utility shall
201 conduct a facility retirement study for owned facilities located in the Commonwealth that emit carbon
202 dioxide as a byproduct of combusting fuel and shall include the study results in its integrated resource
203 plan. Upon filing the integrated resource plan with the Commission, the utility shall contemporaneously
204 disclose the study results to each planning district commission, county board of supervisors, and city and
205 town council where such electric generation unit is located, the Department of Energy, the Department
206 of Housing and Community Development, the Virginia Employment Commission, and the Virginia
207 Council on Environmental Justice. The disclosure shall include (i) the driving factors of the decision to
208 retire and (ii) the anticipated retirement year of any electric generation unit included in the plan. Any
209 electric generating facility with an anticipated retirement date that meets the criteria of § 45.2-1701.1
210 shall comply with the public disclosure requirements therein.

211 D. *As part of preparing any integrated resource plan pursuant to this section, each utility shall make*
212 *a draft of the updated integrated resource plan available to the public and shall conduct outreach to*
213 *engage the public and provide opportunities for the public to contribute information and ideas, as well*
214 *as the ability for the public to make relevant inquiries, to the utility when formulating its integrated*
215 *resource plan. Each utility shall report its public outreach efforts to the Commission. Additionally, each*
216 *utility shall conduct an ongoing stakeholder review process for the purpose of considering, and inviting*
217 *stakeholder input and review on, changes to the utility's integrated resource plan development*
218 *methodology and modeling inputs and assumptions. The stakeholder review process shall include*
219 *representatives from multiple interest groups, including residential and industrial classes of ratepayers.*
220 *Each utility shall, at the time of the filing of its integrated resource plan, indicate to the Commission the*
221 *composition of current and prospective stakeholders and report on any stakeholder meetings that have*
222 *occurred prior to the filing date.*

223 E. The Commission shall analyze and review an integrated resource plan and, after giving notice and
224 opportunity to be heard, the Commission shall make a determination within nine months after the date
225 of filing as to whether such an integrated resource plan is reasonable and is in the public interest.

226 **2. That the State Corporation Commission (the Commission) shall convene a stakeholder work**
227 **group to evaluate the requirements for integrated resource plans set forth in § 56-599 of the Code**
228 **of Virginia, as amended by this act, and to evaluate the potential for a Commonwealth energy**
229 **research consortium and fund to conduct energy research and policy analysis with participation**
230 **from higher education institutions. The work group shall (i) assess how the integrated resource**
231 **plan process can be streamlined, focused, and based on recent statutory changes, or otherwise**
232 **revised to remove unnecessary or obsolete requirements and (ii) assess how a Commonwealth**
233 **energy research consortium and fund could further the Commonwealth Clean Energy Policy as**
234 **described in § 45.2-1706.1 of the Code of Virginia; could provide objective analysis and planning**
235 **to guide decisions in the public and private sectors, including analysis of potential legislation;**
236 **could identify programs that would reduce customer energy costs to consumers; and could develop**
237 **a statewide energy efficiency strategy. The work group shall consist of representatives of**
238 **incumbent electric utilities, environmental advocates, affordability advocates, and industry**
239 **stakeholders and a representative of the Division of Consumer Counsel of the Department of Law.**
240 **The Commission shall document the proceedings of the work group and submit a written report to**
241 **the Commission on Electricity Utility Regulation with suggested statutory changes relating to the**
242 **integrated resource plan process no later than December 1, 2023, and simultaneously make copies**
243 **of the report publicly available on the Commission's website.**