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## SENATE BILL NO. 1454

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Commerce and Energy  
on February 16, 2023)

(Patron Prior to Substitute—Senator McPike)

A BILL to direct the State Corporation Commission to develop and implement a pilot program for eligible customer exemptions in energy-intensive trade-exposed industries.

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

1. § 1. Notwithstanding any other provision of law, the State Corporation Commission (the Commission) may develop and implement a pilot program under which energy-intensive trade-exposed (EITE) industries are exempt from all or a portion of charges equivalent to the non-bypassable charges related to the requirements of §§ 56-585.1:11 and 56-585.5 of the Code of Virginia. The pilot program shall be known as the EITE Pilot Program (the Program) and shall be designed to exempt eligible customers within EITE industries from all or a portion of charges equivalent to the non-bypassable charges imposed pursuant to §§ 56-585.1:11 and 56-585.5 of the Code of Virginia by a Phase I or Phase II Utility. The Commission may consider the proposed federal American Clean Energy and Security Act of 2009 and other relevant programs as guidance in establishing the parameters of the Program.

The Program shall commence no later than July 1, 2024, and the aggregate participating customer load shall not exceed 40 megawatts for a Phase I Utility and shall not exceed 200 megawatts for a Phase II Utility. The load of any customer participating in the Program shall be excluded from the definition of "total electric energy" as such term is defined in § 56-585.5 of the Code of Virginia.

If the Commission chooses to develop the Program, it shall first convene a work group consisting of the Secretary of Labor, the Secretary of Finance, and the Secretary of Commerce and Trade or their designees; a representative from the Department of Energy; a representative from the Virginia Manufacturers Association; the Chair and Vice-Chair of the Manufacturing Development Commission; a representative of labor organizations; a representative of the Southern Environmental Law Center; representatives of Phase I and Phase II Utilities; experts in economics, foreign labor, or energy policy from accredited institutions of higher education in the Commonwealth; and other interested parties as determined by the Commission. The Commission and the work group shall assess and quantify (i) the competitive disadvantages to manufacturers in the Commonwealth that compete against foreign manufacturers that use employment practices such as paying lower wages than required by federal or state law, banning representation by labor organizations, or using unpaid or extremely low-paid labor that may include forced, child, or prison labor; (ii) the lack of protection for intellectual property and the long-term economic costs and threats to manufacturers in the Commonwealth posed by foreign manufacturers that illegally obtain intellectual property through methods such as reverse engineering, industrial espionage, and cyber theft; (iii) the additional costs incurred by manufacturers in the Commonwealth for meeting federal and state requirements for clean energy use and standards for environmental protection in comparison with such costs incurred by foreign manufacturers that are not subject to the same or equivalent requirements and standards; and (iv) the advantages of clean energy use for EITE industry manufacturers in the Commonwealth. The Commission and work group shall make all reasonable efforts to ensure that recommendations developed for the Program do not result in cost-shifting to non-EITE electric utility customers or otherwise impede the Commonwealth's clean energy goals. Administrative support for the work group shall be provided by Commission staff and other stakeholder staff as necessary. The work group shall provide legislative, regulatory, and budget recommendations to permit EITE industry manufacturers in the Commonwealth to compete on more equal standing with foreign manufacturers and shall submit a report of its findings and recommendations to the Chairs of the House Committee on Commerce and Energy and the Senate Committee on Commerce and Labor no later than December 1, 2025.

The Commission shall accept petitions by eligible customers to participate in the Program during a 60-day application period following the Program's commencement. The Commission shall allow participation in the Program based on a showing by the applicant and determination by the Commission that such participation would further the public interest in job creation or retention or other economic benefits to the Commonwealth, taking into consideration the impact of the Program on charges to nonparticipating customers as well as the benefits to nonparticipating customers of retaining the EITE industry applicants' load in the rate base and the benefits of retaining the EITE industries applicant load in the tax base for state and local governments. The Commission shall consider the work group's recommendations in ruling on any such application and, in its discretion, may allow partial or full exemption from charges equivalent to the applicable non-bypassable charges for an eligible customer and may allow such exemption for a portion or all of the eligible customer's electric load, based on

60 *such customer's load during the most recent calendar year preceding the date on which the customer is*  
61 *accepted into the Program, and as thereafter updated on an annual basis. The Commission shall rule*  
62 *upon such petitions within four months of the termination of the application period and may provide*  
63 *further application periods subject to the Program's aggregate participating customer load cap.*

64 *On or before December 31, 2025, and annually thereafter, the Commission shall submit a report and*  
65 *make recommendations to the Governor and to the Chairmen of the House Committee on Commerce*  
66 *and Energy and the Senate Committee on Commerce and Labor, or to the Chairmen of any successor*  
67 *committees, regarding the activities of the work group and the status of the Program.*

68 *Any customer served by a competitive service provider pursuant to § 56-577 of the Code of Virginia*  
69 *shall not be eligible to participate in the Program. However, the parameters of the Program shall*  
70 *provide that the Commission may waive any advance notice requirements for any such customer to*  
71 *return to full requirements service by a Phase I or Phase II Utility if the Commission finds the retail*  
72 *customers of such utility will not be adversely affected pursuant to subdivision A 3 of § 56-577 of the*  
73 *Code of Virginia. Upon such return to service, the customer shall be eligible to participate in the*  
74 *Program, except that any customer of a Phase II Utility that is subject to subsection H of § 56-585.5 of*  
75 *the Code of Virginia shall not be eligible to participate in the Program.*

76 *For the purposes of this act:*

77 *"Energy-intensive trade-exposed industries" or "EITE industries" means large private sector*  
78 *manufacturing companies, classified within North American Industry Classification System Sector 31-33,*  
79 *that are constrained in their ability to pass through costs related to a transition to generation of*  
80 *electricity from renewable sources due to domestic or international competition, importation of products*  
81 *that cause emission leakage, or fixed-price manufacturing contracts for the federal government.*

82 *"Phase I Utility" and "Phase II Utility" have the same meaning as provided in subsection A of*  
83 *§ 56-585.1 of the Code of Virginia.*

84 **2. That the provisions of this act shall expire on July 1, 2029.**