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**SENATE BILL NO. 276**

Offered January 10, 2024

Prefiled January 9, 2024

A *BILL to amend the Code of Virginia by adding in Chapter 23 of Title 56 sections numbered 56-596.5 through 56-596.8, relating to energy upgrade programs; implementation plans; capital investment requirements; cost recovery.*

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Patron—Hashmi

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Referred to Committee on Commerce and Labor

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

**1. That the Code of Virginia is amended by adding in Chapter 23 of Title 56 sections numbered 56-596.5 through 56-596.8 as follows:**

**§ 56-596.5. *Energy upgrade programs; implementation plans.***

A. As used in this section:

"Eligible customer" means a customer of an electric utility that (i) owns the property at which the customer receives utility service or (ii) rents the property at which the customer receives utility service, pays all or some of the regular bill for the utility service, and has the written permission of the property owner to participate in a utility's program.

"Energy project" means an upgrade of the efficiency of energy usage at a participant's location, including the addition of renewable energy generation systems such as solar projects, energy efficiency improvements, energy storage systems, demand response equipment, and any combination of such upgrades.

"Participant" means an eligible customer that elects to participate in a utility's program.

"Phase I Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1.

"Phase II Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1.

"Program" means an energy upgrade program offered by a utility pursuant to this section.

"Program contractor" means a contractor that is selected by the participant from an approved list facilitated by a program operator to perform an energy project.

"Program operator" means a state agency, business, or nonprofit organization responsible for implementing a utility's program pursuant to this section.

"Reasonable rate of return" means the utility's weighted average cost of capital.

"Special rate" means a rate established in a schedule established by a utility in order to recover its costs incurred in offering one or more energy projects and a reasonable rate of return on those costs.

"Special rate charge" means a monthly or other regular charge that is associated with one or more energy projects and that a participant or a successor customer at a location pays to a utility pursuant to a special rate, provided that proper notice was given prior to a change in ownership or occupancy.

"Successor customer" means a customer of a utility taking occupancy at a location where an energy project has been installed and where a special rate charge is still in effect. Successor customers at a location with an energy project shall be responsible for the actions of any occupants at such location.

"Utility" means a Phase I or Phase II Utility providing electric services as an investor-owned utility in the Commonwealth.

B. Each utility shall implement a program as described in this section no later than January 1, 2025. Such program shall:

1. Allow a program operator to implement energy projects at an eligible customer's location and recover the costs of such energy project by imposing a special rate charge that is payable directly through the customer's utility bill;

2. Allow an eligible customer of a utility to request and agree to the installation of an energy project at such customer's location;

3. Set a program participant's special rate charge based on the program operator's cost calculations as described in subsection D of § 56-596.7. A program participant's first-year special rate charges shall not exceed 80 percent of the participant's estimated first-year cost savings under utility rates in place at the time of installation of the energy project. The term of cost recovery shall be no more than 80 percent of the estimated life span of the installed upgrade. The Commission may determine and set the percentages for special rate charges and term of cost recovery at a lower percentage if the Commission determines that a lower percentage better serves ratepayers. The Commission may also determine and set different percentages for special rate charges and term of cost recovery for different types of energy upgrade technologies that are part of an energy project;

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59 4. Allow eligible customers to voluntarily provide payment to a program contractor to ensure that  
60 energy projects meet the requirements describe in subsection D of § 56-596.7;

61 5. Allow projects that convert gas appliances to electric to be considered as energy projects under a  
62 program;

63 6. Require participants to permit a utility to recover its costs for investments at individual  
64 participants' locations by collecting a special rate charge through the participants' utility bills; and

65 7. Except as otherwise specified in this section and §§ 56-596.6 and 56-596.8, be modeled after the  
66 Pay As You Save essential elements and minimum program requirements as developed and maintained  
67 by the Energy Efficiency Institute, Inc., and consistent with the essential consumer protections listed on  
68 the U.S. Environmental Protection Agency's inclusive utility investment website at the time of program  
69 design.

70 C. In offering a program, a utility shall apply the special rate charge to a participant's bill no  
71 sooner than 45 days after an energy project is inspected and approved by a program operator or a  
72 program operator's designee.

73 D. In offering a program, a utility shall notify each eligible customer that, if the eligible customer is  
74 income-qualified, the eligible customer may be eligible for utility bill discounts or subsidies and free  
75 energy improvements. The utility shall provide to such income-qualified eligible customers the contact  
76 information regarding such resources.

77 E. A utility offering a program shall hire one or more experienced program operators, in accordance  
78 with rules promulgated by the Commission, to operate the program.

79 F. In marketing a program, a program operator may prioritize marketing to high energy users and  
80 customers with failed essential equipment such as space and water heating equipment. In implementing  
81 a program, a program operator shall prioritize the use of program contractors that have employees who  
82 have received training through state-created job training programs.

83 G. No utility shall require an eligible customer to continue paying the special rate charge for any  
84 energy project that fails and is not repaired within 21 days after the utility receives notice of the failure,  
85 unless the energy project has been damaged or failed to be maintained by the participant or occupants  
86 at the location. The program operator or the program operator's designee shall be responsible for  
87 verifying any failure and its cost. The program operator or the program operator's designee shall also  
88 be responsible for repairing the failed project. In the case of such a failure, the utility may resume  
89 applying charges after the energy project is repaired and functioning, and the utility may extend the  
90 term of payments to recover the utility's costs for missed payments and repairs, for as long as the  
91 energy project continues to function. If the energy project is not repaired within 21 days, the utility  
92 shall bear the costs of repayment until the energy project is repaired.

93 H. A customer that damages or fails to maintain an energy project shall be responsible for the full  
94 repair of the project and payment of the balance to the utility for cost recovery associated with the  
95 damage within the energy project. Notwithstanding any other provision of law, participants at a location  
96 with an energy project shall be responsible for the actions of any occupants at such location.

97 I. Special rate charges shall be automatically binding on successor customers in locations where  
98 energy projects have been installed, provided that proper notice was given prior to a change in  
99 ownership or occupancy.

100 J. The Commission shall evaluate each program implemented pursuant to this section 18 months  
101 after a utility begins offering a program.

102 **§ 56-596.6. Energy upgrade programs; capital investment requirements; recovery of cost of capital.**

103 A. For the purposes of this section, the definitions provided in § 56-596.5 shall apply.

104 B. The Commission shall establish program guidelines with the anticipated schedule of program  
105 availability as follows:

106 1. On and after July 1, 2025, and until July 1, 2027:

107 a. Each Phase II Utility shall invest capital in an amount equal to \$250 million for investments in  
108 energy projects implemented under the Phase II Utility's program; and

109 b. Each Phase I Utility shall invest capital in an amount equal to \$100 million for investments in  
110 energy projects implemented under the Phase I Utility's program.

111 2. On and after July 1, 2027, and until July 1, 2028:

112 a. Each Phase II Utility shall invest capital in an amount equal to \$100 million for investments in  
113 energy projects implemented under the Phase II Utility's program; and

114 b. Each Phase I Utility shall invest capital in an amount equal to \$50 million for investments in  
115 energy projects implemented under the Phase I Utility's program.

116 3. On and after July 1, 2028, each utility shall invest capital in an amount that allows the utility to  
117 implement cost-effective energy projects requested by any eligible customer of the utility, identified by a  
118 third party, or identified by the program operator.

119 C. Under the program established pursuant to § 56-596.5 and this section, participants shall be  
120 charged no more than three percent interest on the cost of their energy projects.

D. A program operator shall inform eligible customers of the availability of the program and their potential eligibility to participate.

E. The Commission shall promulgate rules allowing each utility to recover all of the incurred costs of offering a program, provided that the utility meets the Commission's thresholds for the number of customers served and the amount of its investments in those customers' locations.

F. In the event that a participant fails to pay its utility bill relating to the program, the utility may recover the remaining balance of utility costs from successor customers at the location of the energy project. A utility shall treat a completed energy project as an essential utility service and shall treat nonpayment for a completed energy project the same as all other essential utility services.

G. All funding received pursuant to the federal Inflation Reduction Act of 2022, P.L. 117-169, shall be applied directly to reduce the special rate charges or terms of cost recovery paid by eligible customers, whichever the Commission deems is more beneficial to the customer.

H. The Commission may create specific rates and incentives to promote additional or more comprehensive energy projects or refunds to all eligible customers by requiring utilities to allocate a percentage of the funds realized from increasing sales resulting from electrification of gas-fired heating appliances.

**§ 56-596.7. Energy upgrade programs; program operator duties.**

A. For the purposes of this section, the definitions provided in § 56-596.5 shall apply.

B. A program operator shall implement a utility's program by contacting potential participants, assessing which energy projects qualify for the program at certain locations, ensuring that program contractors' licenses and certificates of insurance are maintained, ensuring that energy projects are completed by program contractors, overseeing energy project installations, and resolving disputes between parties during the installation and life span of an energy project.

C. A program operator may negotiate with supply chain actors, including manufacturers, distributors, and installation contractors, to obtain discounts for services or products from program contractors in order to lower costs for the utility and for eligible participants.

D. In calculating the cost-effectiveness of a proposed energy project in an eligible customer's location, a program operator shall use the process established by the rules promulgated by the Commission pursuant to § 56-596.5. A program operator shall determine that a proposed energy project is sufficiently cost-effective only if the program operator determines that the monetary value of the estimated energy savings from the energy project will produce annual net savings after the special rate charge is applied, based on rates in effect at the time of installation or using a Commission-approved rate escalation algorithm.

E. A program operator shall create and administer an authorized contractor program to provide authorized contractors to a utility or utilities that offer programs pursuant to this section and §§ 56-596.5, 56-596.6, and 56-596.8. The Commission shall establish minimum criteria for contractors that wish to participate in the authorized contractor program, including requiring participating contractors to demonstrate specific skills, licensure, or certification and possess adequate insurance or bonding coverage. In any list of program contractors produced by a program operator, the program operator shall highlight any contractor that is a licensed residential building energy analyst as defined in § 54.1-1144. The program operator shall prioritize local hiring within the authorized contractor program.

F. The Commission shall establish compensation for program operators tied to the necessary costs for the provision of services by program operators.

**§ 56-596.8. Energy upgrade programs; implementation plan.**

A. For the purposes of this section, the definitions provided in § 56-596.5 shall apply.

B. No later than January 1, 2025, the Commission shall require each utility in the Commonwealth to hire a program operator to implement a program that satisfies the requirements of §§ 56-596.5, 56-596.6, and 56-596.7.

C. No later than the date at which the Commission promulgates rules relating to the program established by § 56-596.5, each utility shall submit an implementation plan to the Commission that describes the utility's plan for implementing a program. If the Commission finds that the content of the implementation plan does not comply with the requirements of §§ 56-596.5, 56-596.6, and 56-596.7 or any rule promulgated by the Commission, the Commission may require the utility to modify its implementation plan.

2. That, no later than 180 days after the effective date of this act, the State Corporation Commission shall convene a stakeholder process in which interested parties shall evaluate issues related to energy projects, as defined in § 56-596.5 of the Code of Virginia, as created by this act. The stakeholder group shall submit comments related to the implementation of energy upgrade programs by utilities pursuant to §§ 56-596.5 through 56-596.8 of the Code of Virginia, as created by this act. The stakeholder group shall complete its meetings by November 30, 2024, and shall

182 submit to the Chairmen of the House Committee on Commerce and Energy and the Senate  
183 Committee on Commerce and Labor a report of its findings and recommendations no later than  
184 the first day of the 2025 Regular Session of the General Assembly.

185 3. That the State Corporation Commission (the Commission) shall promulgate regulations to  
186 implement the provisions of §§ 56-596.5 through 56-596.8 of the Code of Virginia, as created by  
187 this act, to be effective within 365 days of the effective date of this act. In promulgating the  
188 regulations, the Commission shall review the input of stakeholders convened pursuant to the  
189 second enactment of this act. The regulations shall include (i) rules for determining which  
190 potential energy projects are eligible for program participation, except that energy projects that  
191 are intended to directly improve gas, water, and space heating appliance operating efficiency or to  
192 install gas appliances shall not be eligible projects; (ii) rules establishing conditions under which  
193 certain electric utilities may secure capital to fund energy projects, as required by § 56-596.6 of  
194 the Code of Virginia, as created by this act, and in promulgating such rules the Commission shall  
195 (a) allow utilities to raise capital independently or work with third-party lenders to secure capital;  
196 (b) require a utility to identify the least costly sources of capital suitable for the duration of cost  
197 recovery as specified in section § 56-596.5 of the Code of Virginia, as created by this act; and (c)  
198 allow the state to identify or provide the lowest cost capital for a utility's program; (iii) rules  
199 establishing a process for program operators to use to calculate the cost-effectiveness of proposed  
200 energy projects at a customer's location and the Commission's approval of each program  
201 operator's cost-effectiveness analysis protocols and software prior to their use in one or more  
202 programs or the Commission may designate an independent third-party certification in lieu of  
203 direct approval; (iv) rules establishing guidelines for program operators to use in communicating  
204 with customers about a utility program; (v) rules requiring each utility to hire one or more  
205 experienced program operators to perform the duties described in § 56-596.7 of the Code of  
206 Virginia, as created by this act, which program operator shall not be partially or wholly owned by  
207 the hiring utility nor owned by companies that the hiring utility partially or wholly owns; (vi)  
208 rules that require continued bill savings for successor customers, with a focus on successor  
209 customers in rental properties; and (vii) rules and standards for evaluation, measurement, and  
210 verification of utility programs consistent with those in 20VAC5-318-50 of the Virginia  
211 Administrative Code. In promulgating rules, the Commission shall determine how best to include  
212 access to the program for utility customers that need emergency upgrades when one or more  
213 major existing appliances fail and must be quickly replaced.

214 4. That, in promulgating rules pursuant to this first and third enactments of this act, the State  
215 Corporation Commission (the Commission) shall determine how best to serve residents of  
216 environmental justice communities, as defined in § 2.2-234 of the Code of Virginia, through  
217 implementation of a program, as defined in § 56-596.5 of the Code of Virginia, as created by this  
218 act. The Commission may consider targeted marketing efforts, engagement and communication  
219 with groups and programs that serve environmental justice communities, requiring utilities to  
220 ensure that a certain percentage of customers participating in a program are members of an  
221 environmental justice community, requiring utilities to exempt members of environmental justice  
222 communities from all or a portion of the special rate charges for program participation, and  
223 requiring utilities to ensure that terms of cost recovery for members of environmental justice  
224 communities do not exceed a certain percentage of the estimated life span of the installed upgrade.  
225 Should the Commission promulgate rules based on these considerations, it shall direct affected  
226 utilities to create a fund or to identify and use other sources of funding to pay for repair or  
227 remediation of structural or health and safety deficiencies that prevent implementation of energy  
228 upgrades to buildings that house or serve environmental justice communities. In rules promulgated  
229 pursuant to the first and third enactments of this act, the Commission may allow affected utilities  
230 to recover from customers the cost of funding the repairs and remediation that may be required  
231 for energy upgrades to buildings that house or serve environmental justice communities.