

## 2024 SESSION

LEGISLATION NOT PREPARED BY DLS  
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### SENATE BILL NO. 688

Offered January 18, 2024

*A BILL to amend and reenact § 56-585.1:11 of the Code of Virginia, relating to development of offshore wind capacity; prohibited cost recovery.*

Patron—Suetterlein

Referred to Committee on Commerce and Labor

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

**1. That § 56-585.1:11 of the Code of Virginia is amended and reenacted as follows:**

**§ 56-585.1:11. Development of offshore wind capacity.**

A. As used in this section:

"Advanced clean energy buyer" means a commercial or industrial customer of a Phase II Utility, irrespective of generation supplier, (i) with an aggregate load over 100 megawatts; (ii) with an aggregate amount of at least 200 megawatts of solar or wind energy supply under contract with a term of 10 years or more from facilities located within the Commonwealth by January 1, 2024; and (iii) that directly procures from the utility the electric supply and environmental attributes of the offshore wind facility associated with the lesser of 50 megawatts of nameplate capacity or 15 percent of the commercial or industrial customer's annual peak demand for a contract period of 15 years.

"Aggregate load" means the combined electrical load associated with selected accounts of an advanced clean energy buyer with the same legal entity name as, or in the names of affiliated entities that control, are controlled by, or are under common control of, such legal entity or are the names of affiliated entities under a common parent.

"Control" means the legal right, directly or indirectly, to direct or cause the direction of the management, actions, or policies of an affiliated entity, whether through the ability to exercise voting power, by contract, or otherwise. "Control" does not include control of an entity through a franchise or similar contractual agreement.

"Offshore wind affiliate" means a regulated affiliate company of a Phase II Utility subject to the Commission's jurisdiction established by such utility in connection with any project constructed pursuant to subdivision C 1 for the purpose of securing a noncontrolling equity financing partner for the project.

"Qualifying large general service customer" means a customer of a Phase II Utility, irrespective of general supplier, (i) whose peak demand during the most recent calendar year exceeded five megawatts and (ii) that contracts with the utility to directly procure electric supply and environmental attributes associated with the offshore wind facility in amounts commensurate with the customer's electric usage for a contract period of 15 years or more.

"Wind turbine generator" means a structure composed of a tower, a rotor with blades connected at the hub, and nacelle and ancillary electrical and other equipment that is affixed to a foundation of which multiple structures comprise a generating facility.

B. In order to meet the Commonwealth's clean energy goals, prior to December 31, 2032, the construction or purchase by a public utility of one or more offshore wind generation facilities located off the Commonwealth's Atlantic shoreline or in federal waters and interconnected directly into the Commonwealth, with an aggregate capacity of up to 5,200 megawatts, is in the public interest and the Commission shall so find, provided that no customers of the utility shall be responsible for costs of any such facility in a proportion greater than the utility's ownership share of the facility, including any ownership share held by an offshore wind affiliate.

C. 1. Pursuant to subsection B, construction by a Phase II Utility of one or more new utility-owned and utility-operated generating facilities utilizing energy derived from offshore wind and located off the Commonwealth's Atlantic shoreline, with an aggregate rated capacity of not less than 2,500 megawatts and not more than 3,000 megawatts, along with electrical transmission or distribution facilities associated therewith for interconnection is in the public interest. In acting upon any request for cost recovery by a Phase II Utility or its offshore wind affiliate for costs associated with such a facility, the Commission shall determine the reasonableness and prudence of any such costs, provided that such costs shall be presumed to be reasonably and prudently incurred if the Commission determines that (i) the utility has complied with the competitive solicitation and procurement requirements pursuant to subsection E; (ii) the project's projected total levelized cost of energy, including any tax credit, on a cost per megawatt hour basis, inclusive of the costs of transmission and distribution facilities associated with the facility's interconnection, does not exceed 1.4 times the comparable cost, on an unweighted average basis, of a conventional simple cycle combustion turbine generating facility as estimated by the U.S. Energy

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59 Information Administration in its Annual Energy Outlook 2019; and (iii) the utility has commenced  
60 construction of such facilities for U.S. income taxation purposes prior to January 1, 2024, or has a plan  
61 for such facility or facilities to be in service prior to January 1, 2028. The Commission shall disallow  
62 costs, or any portion thereof, only if they are otherwise unreasonably and imprudently incurred. In its  
63 review, the Commission shall give due consideration to (a) the Commonwealth's renewable portfolio  
64 standards and carbon reduction requirements, (b) the promotion of new renewable generation resources,  
65 and (c) the economic development benefits of the project for the Commonwealth, including capital  
66 investments and job creation, arising from project construction and operation and the manufacture of  
67 wind turbine generator components and subcomponents.

68 2. Notwithstanding the provisions of § 56-585.1, the Commission shall not grant an enhanced rate of  
69 return to a Phase II Utility for the construction of one or more new utility-owned and utility-operated  
70 generating facilities utilizing energy derived from offshore wind and located off the Commonwealth's  
71 Atlantic shoreline pursuant to this section.

72 3. Any such costs proposed for recovery through a rate adjustment clause pursuant to subdivision A  
73 6 of § 56-585.1 shall be allocated to all customers of the utility in the Commonwealth as a  
74 non-bypassable charge, regardless of the generation supplier of any such customer, other than (i) PIPP  
75 eligible utility customers, (ii) advanced clean energy buyers, and (iii) qualifying large general service  
76 customers. No electric cooperative customer of the utility shall be assigned, nor shall the utility collect  
77 from any such cooperative, any of the costs of such facilities, including electrical transmission or  
78 distribution facilities associated therewith for interconnection. *In acting upon any request for cost*  
79 *recovery by a Phase II Utility or its offshore wind affiliate for costs associated with such a facility, the*  
80 *Commission shall not approve cost recovery in excess of \$16 million related to the purchase of a lease*  
81 *area right in an offshore wind auction taking place on or after July 1, 2024, or from an awardee of*  
82 *such an auction.* The Commission may promulgate such rules, regulations, or other directives necessary  
83 to administer the eligibility for these exemptions.

84 4. The Commission shall permit a portion of the nameplate capacity of any such facility, in the  
85 aggregate, to be allocated to (i) advanced clean energy buyers or (ii) qualifying large general service  
86 customers, provided that no more than 10 percent of the offshore wind facility's capacity is allocated to  
87 qualifying large general service customers. A Phase II Utility or its offshore wind affiliate shall petition  
88 the Commission for approval of a special contract with any advanced clean energy buyer, or any special  
89 rate applicable to qualifying large general service customers, pursuant to § 56-235.2, no later than 15  
90 months prior to the projected commercial operation date of the facility, and all customer enrollments  
91 associated with such special contracts or rates shall be completed prior to commercial operation of the  
92 facility. Any such special contract or rate may include provisions for leveled rates of service over the  
93 duration of the customer's contracted agreement with the utility, and the Commission shall determine  
94 that such special contract or rate is designed to hold nonparticipating customers harmless over its term  
95 in connection with any petition for approval by the utility. The utility may petition for approval of such  
96 special contracts or rates in connection with any petition for approval of a rate adjustment clause  
97 pursuant to subdivision A 6 of § 56-585.1 to recover the costs of the facility, and the Commission shall  
98 rule upon any such petitions in its final order in such proceeding within nine months from the date of  
99 filing.

100 D. In constructing any such facility contemplated in subsection B, the utility shall develop and  
101 submit a plan to the Commission for review that includes the following considerations: (i) options for  
102 utilizing local workers; (ii) the economic development benefits of the project for the Commonwealth,  
103 including capital investments and job creation; (iii) consultation with the Commonwealth's Chief  
104 Workforce Development Officer, the Chief Diversity, Equity, and Inclusion Officer, and the Virginia  
105 Economic Development Partnership on opportunities to advance the Commonwealth's workforce and  
106 economic development goals, including furtherance of apprenticeship and other workforce training  
107 programs; (iv) giving priority to the hiring, apprenticeship, and training of veterans, as that term is  
108 defined in § 2.2-2000.1, local workers, and workers from historically economically disadvantaged  
109 communities; and (v) procurement of equipment from Virginia-based or United States-based  
110 manufacturers using materials or product components made in Virginia or the United States, if  
111 reasonably available and competitively priced.

112 E. Any project constructed or purchased pursuant to subsection B shall (i) be subject to competitive  
113 procurement or solicitation for a substantial majority of the services and equipment, exclusive of  
114 interconnection costs, associated with the facility's construction; (ii) involve at least one experienced  
115 developer; and (iii) demonstrate the economic development benefits within the Commonwealth, including  
116 capital investments and job creation. A utility may give appropriate consideration to suppliers and  
117 developers that have demonstrated successful experience in offshore wind.

118 F. Any project constructed or purchased pursuant to subsection B shall include an environmental and  
119 fisheries mitigation plan submitted to the Commission for the construction and operation of such  
120 offshore wind facilities, provided that such plan includes an explicit description of the best management

practices the bidder will employ that considers the latest science at the time the proposal is made to mitigate adverse impacts to wildlife, natural resources, ecosystems, and traditional or existing water-dependent uses. The plan shall include a summary of pre-construction assessment activities, consistent with federal requirements, to determine the spatial and temporal presence and abundance of marine mammals, sea turtles, birds, and bats in the offshore wind lease area.

G. In connection with any project constructed by a Phase II Utility pursuant to subdivision C 1, such utility may, subject to Commission approval pursuant to Chapter 4 (§ 56-76 et seq.), establish an offshore wind affiliate for the purpose of securing a noncontrolling equity financing partner for the project, and such offshore wind affiliate may be permitted to construct, own, or operate such project pursuant to subdivision C 1, or a portion thereof. Notwithstanding the provisions of the Utility Facilities Act (§ 56-265.1 et seq.), an offshore wind affiliate shall be permitted to operate as a public utility in association with the Phase II Utility and shall be entitled to all rights and privileges of a public utility solely in connection with the project. Nothing in this subsection shall prevent the Phase II Utility or its offshore wind affiliate from recovering the prudently incurred costs of constructing or operating the project pursuant to this section or subdivision A 6 of § 56-585.1, regardless of whether such costs are incurred by the utility or its offshore wind affiliate. In acting upon any such request for cost recovery by the Phase II Utility, the Commission shall utilize the capital structure and cost of capital of the utility, consistent with subdivision A 10 of § 56-585.1, and the capital structure and cost of capital of any noncontrolling entity's interest in the offshore wind affiliate shall be disregarded. If any ownership interest in the offshore wind affiliate is transferred to such a noncontrolling entity, the Commission shall ensure, in granting any approval for such transfer pursuant to the Utility Transfers Act (§ 56-88 et seq.), or for cost recovery under this section or subdivision A 6 of § 56-585.1, that any gain on the utility's basis for the project is credited to the utility's customers through a rate adjustment clause credit mechanism and amortized over such period as the Commission determines to be appropriate.