

HOUSE BILL NO. 1430

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Ware)

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) shall 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.

To assist with development of the Program, the Commission may 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; experts

27 in economics, foreign labor, or energy policy from accredited institutions of higher education in the  
28 Commonwealth; and other interested parties as determined by the Commission. The Commission and the  
29 work group shall assess and quantify (i) the competitive disadvantages to manufacturers in the  
30 Commonwealth that compete against foreign manufacturers that use employment practices such as paying  
31 lower wages than required by federal or state law, banning representation by labor organizations, or using  
32 unpaid or extremely low-paid labor that may include forced, child, or prison labor; (ii) the lack of  
33 protection for intellectual property and the long-term economic costs and threats to manufacturers in the  
34 Commonwealth posed by foreign manufacturers that illegally obtain intellectual property through methods  
35 such as reverse engineering, industrial espionage, and cyber theft; (iii) the additional costs incurred by  
36 manufacturers in the Commonwealth for meeting federal and state requirements for clean energy use and  
37 standards for environmental protection in comparison with such costs incurred by foreign manufacturers  
38 that are not subject to the same or equivalent requirements and standards; and (iv) the advantages of clean  
39 energy use for EITE industry manufacturers in the Commonwealth. The Commission and work group  
40 shall make all reasonable efforts to ensure that recommendations developed for the Program do not result  
41 in cost-shifting to non-EITE electric utility customers or otherwise impede the Commonwealth's clean  
42 energy goals. Administrative support for the work group shall be provided by Commission staff and other  
43 stakeholder staff as necessary.

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

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

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

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

70 For the purposes of this act:

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

76 "Phase I Utility" and "Phase II Utility" have the same meaning as provided in subsection A of §  
77 56-585.1 of the Code of Virginia.

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

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