PHTA 2020 Legislative Recap: Virginia

The PHTA Government Relations team was actively monitoring a wide variety of bills moving through the Virginia Assembly. A large number of those bills were energy and climate related, but we also saw some contracting related bills. Some were construction industry related, and some pertained more to misclassification. Below we have highlighted the more prominent bills we have been monitoring in Virginia throughout the past session:

**HB 123 – Construction Contracts:** Nonpayment of wage; private action, liability for payment of wages due under construction contracts. This measure provides protections for employees of subcontractors employed on specific construction projects.

HB 123 provides that, as of July 1, 2020, construction contracts shall be deemed to include a provision under which the general contractor and the subcontractor at all levels are jointly and severally liable to pay any wages due to the subcontractor's employees. If the wages due to the subcontractor's employees are not paid, the general contractor is subject to criminal and civil penalties for which an employer is liable for failing or refusing to pay wages.

The measure requires the subcontractor to indemnify the general contractor for wages, damages, interest, penalties, or attorney fees owed as a result of the subcontractor’s failure to pay the wages unless the subcontractor's failure to pay wages was because of the general contractor's failure to pay moneys due to the subcontractor.

The measure provides that an employer who willfully and with intent to defraud fails or refuses to pay wages in accordance with this section, unless the failure to pay was because of a bona fide dispute between the employer and its employee. This measure has been signed by Governor Ralph Northam and will become effective July 1, 2020.

**HB 466 – Business License Waivers:** This measure allows certain localities to waive license requirements for certain businesses. This bill allows localities with a population greater than 50,000 to waive license requirements for businesses with gross receipts of $200,000 or less. Under current law, the limit for such waiver is gross receipts of less than $100,000. This measure has been signed by Governor Ralph Northam and will become effective July 1, 2020.

**HB 714 – Decarbonization:** Virginia Energy Plan; climate change pressing challenge. The measure adds the following to the Commonwealth Energy Policy:

(A) Ensure the adequate supply of natural gas necessary to ensure the reliability of the electricity supply and the needs of businesses during the transition to renewable energy;
(B) Establish greenhouse gas emissions reduction standards across all sectors of Virginia’s economy that target net-zero greenhouse gas emissions by 2045;

(C) Enact mandatory clean energy standards and overall strategies for reaching zero carbon in the electric power sector by 2040;

(D) Equitably incorporate requirements for technical, policy, and economic analyses and assessments that recognize unique attributes of different energy resources and delivery systems to identify pathways to net-zero carbon that maximize Virginia’s energy reliability and resilience, economic development, and jobs; and

(E) Minimize the negative impacts of climate change and the energy transition on disadvantaged communities and prioritize investment in these areas

This measure has been signed by Governor Ralph Northam and takes effect July 1, 2020. Though it is hard to predict whether or not natural gas will still have a role in VA in 2045, Governor Northam has initiated greenhouse gas emissions reduction standards that will start to affect the continuing usage and reliability of natural gas for appliances such as water heaters, space heaters, swimming pool heaters, etc.

**HB 1526 – Decarbonization**: Virginia Clean Economy Act. This measure replaces the current voluntary renewable energy portfolio standard with a mandatory program. The measure requires development of regulations that establish a carbon dioxide cap and trade program. The measure provides for development of offshore wind projects and increases the capacity cap on nonresidential eligible customer-generators. Additionally, it increases the statewide cap on total amount of capacity eligible for participation in the net energy metering program.

The measure replaces the current voluntary renewable energy portfolio standard program with a mandatory renewable energy portfolio standard. The measure requires utilities to purchase or generate electric power from renewable sources in increasing percentages starting at 6% for a Phase I utility and 14% for a Phase II utility in 2021 and increasing in steps until 2050 for a Phase I utility and 2045 for a Phase II utility when the percentage reaches 100%. For compliance with the renewable energy portfolio standard program (RPS), Phase I and II utilities must procure and retire renewable energy credits (RECs) originating from an RPS eligible source. By 2025, at least 75% of all RECs used by a retail supplier of electricity, except for a Phase I utility, must come from resources located in Virginia. Retail suppliers of electricity may apply renewable energy sales achieved or RECs acquired in excess of the sales requirement for that RPS program to the sales requirements for future RPS program requirements in the year in which it was generated and the five calendar years after the renewable energy was generated or the RECs were created.

The State Air Pollution Board (Board) must adopt regulations to reduce carbon dioxide emissions from all electricity generating units in the Commonwealth with a nameplate capacity of 25 megawatts or greater that (A) supplies 10% or more of its annual electrical generation to the grid or (B) supplies more than 15% of its annual total useful energy to any entity other than the manufacturing facility to which it is interconnected. The Board is authorized to establish, implement, and manage an auction program to sell allowances to carry out the regulations. The Board is further authorized to enter into an existing multistate trading system instead of
establishing their own allowances program. The Board's regulations may not allow the sale of allowances in the year 2050 and beyond. Allowances may be banked and traded.

The measure provides that a public utility's construction, acquisition, or purchase of energy and capacity from qualified offshore wind projects with an aggregate rated capacity of no less than 5,200 megawatts prior to January 1, 2034 is in the public interest.

The measure requires, by December 31, 2024, the retirement by a Phase I or II utility of oil-fueled electric generating units with a rated capacity of more than 500 megawatts and the retirement of all coal-fired electric generating units in the state. This requirement does not apply to coal-fired units jointly owned with a cooperative utility or coal-fired units owned and operated by a Phase II utility located in the coalfield region of Virginia that co-fires with biomass.

By December 31, 2028, a Phase I and II utility must retire all biomass-fired electric generating units that do not co-fire with coal.

By December 31, 2045, all Phase I and Phase II utilities must retire all other electric units in Virginia that emit carbon as a byproduct of combusting fuel to generate electricity.

A Phase I or II utility may petition the State Corporation Commission for relief from the retirement requirements on the basis that it would threaten the reliability or security of electric service to customers.

This measure has been signed by Governor Ralph Northam and takes effect July 1, 2020. Public utilities will begin instituting plans, programs, and standards aimed toward renewable energy sources and reliability to lay the groundwork for transitioning from natural gas in the years to come.

**SB 744 - Misclassification of employees as independent contractors:** Department of Taxation to investigate. This measure prohibits an employer from classifying a bona fide employee as an independent contractor and institutes penalties.

Any employer, or any officer or agent of the employer, that fails to properly classify an individual as an employee in accordance with § 58.1-1900 for purposes of this title, Title 40.1, Title 60.2, or Title 65.2 and fails to pay taxes, benefits, or other contributions required to be paid with respect to an employee shall, upon notice by the Department to the affected party, be subject to a civil penalty of up to $1,000 per misclassified individual for a first offense, up to $2,500 per misclassified individual for a second offense, and up to $5,000 per misclassified individual for a third or subsequent offense. Each civil penalty assessed under this chapter shall be paid into the general fund.

Whenever the Department determines, after notice to the employer, that an employer failed to properly classify an individual as an employee under the provisions of § 58.1-1900, the Department shall notify all public bodies and covered institutions of the name of the employer. Upon an employer's subsequent violations of subsection A, all public bodies and covered institutions shall not award a contract to such employer or to any firm, corporation, or partnership in which the employer has an interest in the following manner:
1. For a period of up to one year, as determined by the Department, from the date of the notice for a second offense.

2. For a period of up to three years, as determined by the Department, from the date of the notice for a third or subsequent offense.

No person shall require or request that an individual enter into an agreement or sign a document that results in the misclassification of the individual as an independent contractor or otherwise does not accurately reflect the relationship with the employer. It shall be unlawful for an employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this chapter.

The Department shall report annually to the Governor and the General Assembly regarding compliance with and enforcement of this chapter. The Department’s report shall include information regarding the number of investigated reports of worker misclassification; the findings of such reports; the amount of combined tax, interest, and fines collected; the number of referrals to the Department of Labor and Industry, Virginia Employment Commission, Department of Small Business and Supplier Diversity, Virginia Workers’ Compensation Commission, and Department of Professional and Occupational Regulation; and the number of notifications of failure to properly classify to all public bodies and institutions.

This measure has been signed by Governor Ralph Northam and will become effective January 1, 2021.

**SB 842 – Decarbonization**: Electric energy; customer choice. This measure requires 100% of retail sales of electricity sold in Virginia come from renewable sources by January 1, 2050.

The bill would require the State Corporation Commission (Commission) to promulgate regulations that would require all suppliers of electric energy to obtain their energy sales in the following amounts from renewable sources: (A) By January 1, 2025, 25%; (B) By January 1, 2030, 50%; and (C) By January 1, 2050, 100%

The Commission may establish additional incremental benchmarks, provided the following is prioritized: (A) Reducing the amount of carbon dioxide emitted from generation facilities used to provide electric energy to the Commonwealth; (B) Protect consumers from unreasonable rate increases; and (C) Support economic development in the Commonwealth

During the hearing in the Senate Commerce and Labor Committee on February 3, the committee voted unanimously to continue this measure to the 2021 Legislative Session. Though this, and many other “decarb” measures do not specifically mention banning natural gas for appliances like pool heaters, it is important to be aware of the movements and initiatives which states are beginning to take in order to reduce carbon emissions. There will be a push for more energy saving and electric products as more states set target goals for carbon reduction, renewable reliability, and other decarb efforts.

PHTA has initiated efforts in CA, the epicenter of the decarb movements. We have been formed a coalition of PHTA members in CA and around the country to discuss the potential impact this movement may have on the industry. We have also been working with the California Pool and Spa
Association (CPSA) to engage and monitor these efforts in CA. PHTA also participates in a national decarb task force, led by the American Gas Association (AGA) and made up of natural gas industry leaders and stakeholders such as PHTA. With decarb initiatives spreading throughout the country, PHTA encourages members to get involved with our balanced energy solutions approach. In the coming months and years, we will need to focus on grassroots efforts at the local and state levels to advocate for consumer choice and industry stability. To learn more about getting involved, contact bscanland@phta.org or jhatfield@phta.org.