

VIRGINIA CODE COMMISSION

Monday, October 15, 2018 - 10 a.m.

Richmond, Virginia 23219

Draft Minutes

Members Present: John S. Edwards; Rita Davis; Leslie L. Lilley; Charles S. Sharp; Ryan T. McDougle; James A. Leftwich, Jr.; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; Christopher R. Nolen; Samuel T. Towell; Mark Vucci

Members Absent: None

Staff Present: Scott Meacham, Jeff Sharp, Amigo Wade, Kristen Walsh, Brittany Olwine, Karen Perrine, Anne Bloomsburg, Andrew Kubincanek, Division of Legislative Services (DLS)

Others Present: Eric Page, Administrative Law Advisory Committee; Brian Kennedy, LexisNexis; Michael Skiffington, Department of Mines, Minerals and Energy

Call to order; welcome and introduction of new members: Senator Edwards, chair, called the meeting to order at 10:00 a.m.

Approval of minutes: The minutes of the August 6, 2018, meeting of the Commission, as printed and distributed to the members, were approved without objection.

Report of activities and reappointment of members of the Administrative Law Advisory Committee (ALAC): Eric Page reported the hearing officer handbook has been updated and the work group to review the executive branch review process for state regulatory actions has reconvened. Mr. Page requested that the Commission reappoint the following members to ALAC: Roger L. Chaffe, Jeffrey S. Gore, Karen W. Perrine, and Kristi S. Wright. The Commission approved the appointments and accepted the annual report.

Report of the Code of Virginia contract work group - update on Request for Information and closed session: Mr. Vucci reported that the Request for Information regarding the contract to publish the Code of Virginia, which had been approved by the Commission at its August 6, 2018, meeting, had been issued. The deadline for responding to the request was October 1, 2018. Mr. Vucci reviewed several differences between the current contract and the proposed new contract, including that the new contract will be a six-year contract with two three-year renewal periods and the database deadline is June 23. Mr. Vucci then moved that the Commission convene in a closed session pursuant to § 2.2-3711 A 29 of the Code of Virginia to discuss the award of a public contract for the publication of the Code of Virginia. Upon a second by Mr. Miller, the Commission approved the closed session and that Karen Perrine, Anne Bloomsburg, and Lilli Hausenfluck attend the closed session as their presence is necessary or will reasonably aid the Commission in its consideration of this matter.

The Commission reconvened in open session, and by roll call, all members of the Commission certified that to the best of his or her knowledge that (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public business matters as were identified in the motion for the closed session were heard, discussed, or considered in the closed meeting by the Commission.

Mr. Vucci moved that the Commission direct the Division of Legislative Services to develop a contract with LexisNexis on the terms outlined in the Request for Information with an additional term regarding provision of eight copies of the Acts of Assembly to LexisNexis. The motion was seconded properly and passed unanimously.

Recodification of Title 45.1, Mines and Mining: approval of members of work group: Scott Meacham, Division of Legislative Services, gave an overview of Title 45.1 and the expected approach

for recodification. Michael Skiffington of the Department of Mines, Minerals and Energy was present to answer any technical questions that might arise. Mr. Meacham explained that the recodification was mainly renumbering and reorganization. The goal is to complete the recodification in 2020 for introduction of a bill into the 2021 Session of the General Assembly. Mr. Meacham reviewed the Work Group Composition Proposal, which includes representatives of state government, industry, conservation and environmental groups, academics, and attorneys. Senator McDougle moved approval of the work group composition and members. The motion was seconded properly and passed unanimously.

Not Set Out - Title 15.2, Counties, Cities and Towns: At its June 4, 2018, meeting, the Commission received and reviewed a report by Jeff Sharp, Division of Legislative Services, regarding the codified provisions in Title 15.2 of the Code of Virginia that currently show as "not set out." At the conclusion of Mr. Sharp's presentation, the Commission deferred a decision to receive input from Judge Lilley, a former president of the Local Government Attorneys Association, who was not able to attend the June meeting. The matter is back before the Commission at this meeting.

Mr. Sharp went over his report and recommendations with the Commission. The Commission determined not to recommend that § 15.2-6201 be repealed because it related to bonds; the section will be set out.

After a brief discussion regarding codifying only rules of general application, Judge Lilley moved to accept the staff recommendations to set out the provisions in Title 15.2 as provided in the report. The motion was seconded properly and passed, with Mr. Moncure voting no. For the sections that have population brackets that will be replaced with locality names, the Commission also approved a draft bill for introduction into the 2019 Session of the General Assembly.

2019 Code of Virginia pricing and replacement volume proposal: Brian Kennedy, LexisNexis, presented the proposed 2019 replacement volumes and pricing. Three volumes are recommended for replacement due to the size of the supplement: Volumes 6 (Titles 33.2-37.2), 7B (Title 54.1), and 9 (Titles 59.1-64.2). Volume 8 (Titles 55-57) will be replaced due to the recodification of Title 55, for a total of four replacement volumes. The Publisher's Price Index increase for professional books is 5.75%; LexisNexis is recommending only a 5% increase. After a review of recent price increases, Mr. Miller moved to approve a 5% increase. The motion was seconded properly and voted upon. Ms. Davis voted no, stating that the prices listed in the materials differed slightly from a 5% increase. The Commission reconsidered Mr. Miller's motion. Mr. Kennedy explained that the differences are due to rounding. Ms. Davis moved that the Commission approve the prices as listed in the materials. The motion was seconded properly and passed unanimously. Upon a motion by Senator McDougle, properly seconded, the Commission approved the four recommended replacement volumes - 6, 7B, 8, and 9.

Proposed legislation to amend the Code of Virginia: Mark Vucci presented two proposed bills for recommendation by the Commission to the General Assembly. The first amends the Code of Virginia to reflect the current practice with respect to employment of the Registrar of Regulations. Mr. Vucci moved that the draft bill be approved for introduction in the 2019 Session of the General Assembly. The motion was seconded properly and passed unanimously. The other bill amends the Code of Virginia to allow the Commission to fulfill its statutory responsibilities in publishing the Code of Virginia, Virginia Administrative Code, and the Virginia Register of Regulations by means of either an online publication or actual printing. After a brief discussion, the draft bill was tabled.

Recodification of Title 55, Property and Conveyances: Amigo Wade, Kristen Walsh, and Brittany Olwine, Division of Legislative Services, presented the final matters regarding the recodification of Title 55 for consideration by the General Assembly at its 2019 Session. Mr. Wade described the materials previously approved by the Commission and reviewed in detail the proposed cover letter and executive summary for the Report of the Commission to the General Assembly. The executive summary includes the organization of the new title, statutory provisions proposed for repeal, chapters being moved to other titles of the Code of Virginia for better topical fit, explanation of technical changes, and commission-approved substantive changes. He also explained the 13 proposed enactment clauses for the recodification bill and the comparative tables. Mr. Miller suggested that sections repealed be added as substantive action and that copies of the executive summary be provided to the General Assembly members serving on the committee to which the bill is referred.

Mr. Vucci personally thanked Mr. Wade, Ms. Walsh, and Ms. Olwine for their diligent efforts and fine work. He also thanked the work group. The Commission concurred with Mr. Vucci's remarks. Ms. Walsh thanked Chip Dicks, a member of the work group. Upon a motion by Mr. Vucci, properly seconded, the Commission unanimously approved the report and the draft bill. Mr. Nolen stated that while he is voting in favor of the report and draft bill, he is abstaining from the portion of the report and recodification pertaining to timeshares because of his firm's representation of the American Resort Development Association.

Mr. Vucci also moved that Mr. Wade, Ms. Walsh, and Ms. Olwine be presented with a bound copy of the report, as is tradition with previous recodifications. The motion was seconded properly and passed unanimously.

Other business:

Election of Vice Chair: Senator Edwards moved that Delegate Leftwich be elected as Vice Chair of the Commission. The motion was seconded properly and passed.

Review of 2019 Code Commission legislative package and selection of bill patrons: Senator Edwards will carry the recodification of Title 55 bill, Delegate Leftwich will carry the bill regarding Title 15.2 not set out provisions, and Senator McDougle will carry the bill regarding employment of the Registrar of Regulations.

Memorandum of understanding to continue Publisher's Forum: Karen Perrine, Division of Legislative Services, reviewed the memorandum of understanding for participation in the electronic Publisher's Forum of the Commission. The current memorandum will expire November 21, 2018. Ms. Perrine requested that the Commission approve renewal, with future extensions approved by the Commission Chair. Upon a motion by Mr. Nolen, properly seconded, the Commission granted approval.

Remarks on the Boyd-Graves Conference: Mr. Vucci stated that the Conference issued a report regarding the use of "shall" v. "may" in the Code of Virginia. The report recommends a prospective review and replacement of "shall" in cases where it is misused with the accurate word. Mr. Vucci stated that there are over 20,000 sections of the Code of Virginia that use "shall." The current Division of Legislative Services drafting policy is to use "shall" only when the requirement is mandatory. Judge Sharp stated that each instance of "shall" would need to be studied to determine its meaning in a particular section before making a replacement. The Commission discussed other concerns with prospective incorporation. Delegate Leftwich indicated that Boyd-Graves will have a committee study this matter for next year's conference.

Versioning for the Virginia Administrative Code: Previously, Thomson Reuters-West advised that CDs of the administrative code would be phased out, and Commission staff would be given access to WestLaw instead. The Commission had approved a contract modification reflecting this change. Ms. Perrine reported that Alex Medrano, West, has informed her that West is not going to phase out CDs for at least several years. Therefore, the contract does not need to be modified at this time. Mr. Medrano also indicated that West is filling in historical data and will provide information as to versioning at a later date.

Public comment, adjournment: Senator Edwards opened the floor for public comment. No member of the public asked to be heard.

As there was no further business to discuss, the meeting was adjourned at 12:05 p.m.

Work Plan.

I. Background.

The recodification of Title 45.1 will be a two-year project.

Number of Code sections covered per meeting.

There are 573 Code sections in Title 45.1. Covering half of the Title each year gives 287 sections per year. Dividing the 287 sections by five Code Commission meetings in 2019 will require coverage of **57 Code sections** per Code Commission meeting for the first year.

Year-by-year breakdown.

2019: Chaps. 14.2, 14.3 (propose to split in two), 14.4, 14.7, 14.7:2, 14.8, and 18.
Approximately 285 sections.

2020: Chaps. 14.1, 14.4:1, 14.5, 14.6, 14.7:1, 15.1, 16, 18.1, 19, 20, 21, 22.1, 24, 25, and 26.
Approximately 288 sections.

Meetings.

Workgroup meetings will be held on the Wednesday that falls ten working days before each Code Commission meeting. Code Commission meetings are held on the first or second Monday of each month.

The workgroup will see two drafts of each group or tranche of Code sections. Each tranche will be sent out one week ahead of the workgroup meeting at which it will be reviewed.

II. 2019 Schedule.

April

24 Wednesday. First workgroup meeting. Review proposed outline of Title.

May

6 Monday. Code commission meeting. Work plan and outline of Title are presented.
No workgroup meeting this month.

June

5 Wednesday. Workgroup meeting. First review of Tranche 1.
17 Monday. Code commission meeting. Nothing is presented.

Title 45.1 Recodification

July

No meetings.

August

7 Wednesday. Workgroup meeting. First review of Tranche 2, second review of Tranche 1.

19 Monday. Code commission meeting. Tranche 1 is presented.

September

4 Wednesday. Workgroup meeting. First review of Tranche 3, second review of Tranche 2.

16 Monday. Code commission meeting. Tranche 2 is presented.

October

9 Wednesday. Workgroup meeting. First review of Tranche 4, second review of Tranche 3.

21 Monday. Code Commission meeting. Tranche 3 is presented.

November

6 Wednesday. Workgroup meeting. First review of Tranche 5, second review of Tranche 4.

18 Monday. Code Commission meeting. Tranche 4 is presented.

December

4 Wednesday. Workgroup meeting. Second review of Tranche 5.

16 Monday. Code Commission meeting. Tranche 5 is presented.

Title 45.1 Recodification: Outline

I. Administration.

- Chapter 14.1 Administration (§§ 45.1-161.1 through 45.1-161.6)
7 sections.
- Chapter 25 Division of Geology and Mineral Resources (§§ 45.1-383 through 45.1-389)
7 sections.
- Chapter 20 Interstate Mining Compact (§ 45.1-271) (covers both coal and non-coal)
1 section.
- Chapter 24 Interstate Compact to Conserve Oil and Gas (§§ 45.1-381 through 45.1-382)
2 sections.

II. Coal Mines.

a. General.

- Chapter 14.2 Coal Mine Safety Act (§§ 45.1-161.7 through 45.1-161.104)
10 articles containing 81 sections.
- Chapter 18 Coal Mining Refuse Piles, Water and Silt Retaining Dams (§§ 45.1-221 through 45.1-225)
4 sections.
- Chapter 14.7 Rights of Owners of Land Adjacent to Coal Mines (§§ 45.1-161.310 through 45.1-161.311)
2 sections.
- Chapter 14.7:2 Trust for Coal Interests (§§ 45.1-161.311:3 through 45.1-161.311:8)
2 articles containing 6 sections.
- Chapter 14.8 Emergency Seizure of Coal Properties by Commonwealth (§§ 45.1-161.312 through 45.1-161.322)
11 sections.

b. Underground coal mines.

- Chapter 14.3 Requirements Applicable to Underground Coal Mines first half (§§ 45.1-161.105 through 45.1-161.173)
9 articles containing 66 sections.
- Chapter 14.3 Requirements Applicable to Underground Coal Mines second half (§§ 45.1-161.174 through 45.1-161.252)
7 articles containing 75 sections.

c. Surface coal mines.

- Chapter 14.4 Requirements Applicable to Surface Coal Mines (§§ 45.1-161.253 through 45.1-161.292)
13 articles containing 40 sections
- Chapter 19 Virginia Coal Surface Mining Control and Reclamation Act of 1979 (§§ 45.1-226 through 45.1-270.7)
5 articles containing 54 sections.

Title 45.1 Recodification: Outline

III. Mineral Mines.

a. General.

Chapter 14.4:1 Mineral Mine Safety Act (§§ 45.1-161.292:1 through 45.1-161.292:73)

9 articles containing 69 sections.

Chapter 16 Permits for Certain Mining Operations; Reclamation of Land (§§ 45.1-180 through 45.1-197.18) (“Nothing herein shall apply to mining of coal.”)

4 articles containing 42 sections.

Chapter 18.1 Mineral Mining Refuse Piles, Water and Silt Retaining Dams (§§ 45.1-225.1 through 45.1-225.3)

3 sections.

Chapter 14.7:1 Rights of Owners of Land Adjacent to Mineral Mines (§§ 45.1-161.311:1 through 45.1-161.311:2)

2 sections.

b. Underground mineral mines.

Chapter 14.5 Requirements Applicable to Underground Mineral Mines (§§ 45.1-161.293 through 45.1-161.303)

11 sections.

c. Surface mineral mines.

Chapter 14.6 Requirements Applicable to Surface Mineral Mining (§§ 45.1-161.304 through 45.1-161.309)

6 sections.

IV. Oil and Gas.

Chapter 22.1 The Virginia Gas and Oil Act (§§ 45.1-361.1 through 45.1-361.44)

4 articles containing 47 sections.

V. Other Forms of Energy.

Chapter 21 Exploration for Uranium Ore (§§ 45.1-272 through 45.1-285.10)

24 sections.

Chapter 26 Energy Division, Etc. (§§ 45.1-390 through 45.1-394) [solar energy]

2 sections.

Chapter 15.1 Geothermal Energy (§§ 45.1-179.1 through 45.1-179.11)

2 articles containing 11 sections.

Draft - 2019 Code Commission Work Plan

CONTINUING

- **Recodification of Title 45.1, Mines and Mining** (DLS Staff: Scott Meacham, David Barry) - 2019 and 2020 interims; introduction into the 2021 Session of the General Assembly.
- **Approve next title for recodification** - Staff recommends Title 32.1 (Health); begin mid-way through 2020 interim as Title 45.1 concludes and continue through 2021 for introduction into the 2022 Session of the General Assembly. In 2018, the Commission approved Title 24.2 (Elections) for recodification beginning in the 2022 interim.
- **Obsolete laws and "Not Set Out" sections** (DLS Staff) - Staff will present various sections of the Code of Virginia to set out in full in the Code. DMV has requested a review of some sections in Title 46.2 (Motor Vehicles). Other sections are in Title 2.2 (Administration of Government - 2 sections), Title 19.2 (Criminal Procedure - 1 section), Title 36 (Housing - 5 sections), and Title 57 (Religious and Charitable Matters; Cemeteries - 6 sections).

Background: Section 30-151 requires review of acts and statutes to identify obsolete provisions no less than every 4 years. The Code Commission conducts this study and makes recommendations to the General Assembly through legislation. In addition, the Code Commission has been reviewing Code of Virginia sections labeled "Not set out" to establish which sections should be set out, not set out, repealed, or amended. Approximately 40 "not set out" sections will be left after completion of the Title 15.2 review and the recodification of Title 45.1 (Mines and Minerals). The obsolete laws and not set out projects were combined in 2017.

- **Sections suggested by staff for reorganization.**

MONITORING

- **Administrative Law Advisory Committee** - Established to assist the Code Commission with oversight authority over the operation and effectiveness of the regulation promulgation process pursuant to the Virginia Administrative Process Act and Virginia Register Act.

Reappointment of ALAC members and approval of work plan or recommendations

- **Rules of evidence** - monitor updates to Virginia Supreme Court Rules and modify Code of Virginia catchlines when necessary (per enactment clause 6 of c. 688 (2012 Acts))

CONTRACT EXPIRATION DATES:

- **Code of Virginia** (LexisNexis): expires August 31, 2020. October 2018 meeting - Commission reviewed response to RFI; authorized staff to negotiate contract with LexisNexis.
- **Virginia Administrative Code** (West): expires April 30, 2020; can extend for four years.
- **Virginia Register of Regulations** (LexisNexis): expires June 2, 2020.
- **Code of Virginia Publishers Forum Access Agreement** (West and LexisNexis): expires November 21, 2019. Allows access to the Code Publishers Forum so noncontract publishers have access to the same information as the contract publisher. Chair approves future renewals.

2019 Uncodified Acts and Enactments Assigned Code Section Numbers or Placed in Existing Code Sections
(as of May 1, 2019)

Section 1 Bills Assigned Code Section Numbers or Placed in Existing Code Sections	
c. 91	<p>1. § 1. That the State § 63.2-217.1. Board to amend regulations governing emergency response plans of assisted living facilities. <u>A. The</u> Board of Social Services shall amend its regulations governing emergency preparedness and response plans and temporary emergency electrical power sources of assisted living facilities to require the following:</p> <ol style="list-style-type: none"> 1. Any assisted living facility that is equipped with an on-site emergency generator shall (i) include in its emergency preparedness and response plan a description of the emergency generator's capacity to provide sufficient power for the operation of lighting, ventilation, temperature control, supplied oxygen, and refrigeration and (ii) test such emergency generator monthly and maintain records of such tests; and 2. Any assisted living facility that is not equipped with an on-site emergency generator shall (i) enter into an agreement with a vendor capable of providing the assisted living facility with an emergency generator for the provision of electricity during an interruption of the normal electric power supply; (ii) enter into at least one agreement with a separate vendor capable of providing an emergency generator in the event that the primary vendor is unable to comply with its agreement with the assisted living facility during an emergency; and (iii) have its temporary emergency electrical power source connection tested at the time of installation and every two years thereafter by a contracted vendor and maintain records of such tests. <p>§ 2. B. The State Department of Social Services shall provide notice to all licensed assisted living facilities regarding the date by which such assisted living facilities must comply with the regulations promulgated pursuant to this act <u>section</u>.</p>
cc. 97 and 294	<p><i>Codify as subsection C of § 63.2-1802:</i></p> <p>1. § 1. That the C. The Board of Social Services shall amend 22VAC40-73-1130 governing staffing of units of assisted living facilities with residents who have serious cognitive impairment due to a primary psychiatric diagnosis of dementia and are unable to recognize danger or protect their own safety and welfare to require that the following number of direct care staff members be awake and on duty and responsible for the care and supervision of the residents at all times during night hours:</p> <ol style="list-style-type: none"> 1. When 22 or fewer residents are present, at least two direct care staff members; 2. When 23 to 32 residents are present, at least three direct care staff members; 3. When 33 to 40 residents are present, at least four direct care staff members; and 4. When more than 40 residents are present, at least four direct care staff members plus at least one additional direct care staff member for every 10 residents or portion thereof in excess of 40 residents. <p>Nothing in this act <u>subsection</u> shall apply to the provisions of 22VAC40-73-280.</p>
c. 209	<p>1. § 1. That the § 32.1-331.03. Process for payment directly to the nursing facility or ICF/MR. The Department of Medical Assistance Services shall, to the extent permitted by federal law, implement a process for payment of the nursing facility or ICF/MR share of payments directly to the nursing facility or ICF/MR rather than to the hospice care provider for hospice services furnished to an individual who is a resident of a nursing facility or ICF/MR and who would be eligible under the Commonwealth's program of medical assistance for nursing facility services or services in an ICF/MR had he not elected hospice care. Payments made directly to a nursing facility or ICF/MR shall be the full amount that would be paid to the nursing facility or ICF/MR if the individual was not receiving hospice services, and shall not reflect any discount to such rates.</p>
c. 301	<p>1. § 1. That the § 63.2-916. Notice of developmental disabilities. The local department of social services shall notify the appropriate community services board as soon as it is known that a child in the foster care system has a developmental disability so that the community services board may screen the child for placement on the statewide developmental disability waiver waiting list.</p>
c. 416	<p>1. § 1. That the § 32.1-323.3. Dependents of foreign service members; waiting lists for certain waivers. The Department of Medical Assistance Services shall amend eligibility criteria for the Community Living waiver and the Family and Individual Support waiver to allow the dependent of a foreign service member who was added to the waiting list for services through such waivers while he was a resident of the Commonwealth to maintain his position on the waiting list following a transfer of the foreign service member to an assignment outside of the Commonwealth, so long as the foreign service member maintains the Commonwealth as his legal residence to which he intends to return following completion of the assignment.</p>

2019 Uncodified Acts and Enactments Assigned Code Section Numbers or Placed in Existing Code Sections
(as of May 1, 2019)

c. 503	<p><i>Codify as subsection B of § 54.1-1108.1:</i></p> <p>1. § 1. A. That the B. The Board for Contractors (Board) is directed to revise Board regulations to allow multiple individuals from a single firm to sit for the business examination required to be confirmed as the firm's designated employee. The Board shall also review current regulations and procedures pertaining to the time allowed for a change of the designated employee to determine if the current time for replacement is sufficient and practicable.</p> <p>B. 2. As used in this section: "Designated employee" means the contractor's full-time employee, or a member of the contractor's responsible management, who is at least 18 years of age and who has successfully completed the oral or written examination required by the Board on behalf of the contractor. "Firm" subsection, "firm" means any business entity recognized under the laws of the Commonwealth of Virginia.</p>
c. 637	<p><i>Codify as subsection D of 22.1-79.1:</i></p> <p>1. § 1. D. Notwithstanding the provisions of § 22.1-79.1 this section or any other provision of law, the school board of any school division located in Planning District 16 that was not granted a good cause waiver pursuant to § 22.1-79.1 this section for the 2018-2019 school year but would qualify for such a waiver pursuant to § 22.1-79.1 this section as it was in effect prior to July 1, 2019, for the 2019-2020 school year may set the school calendar so that the first day students are required to attend is earlier than Labor Day, including earlier than 14 days before Labor Day. Additionally, the school board of any school division located in Planning District 16 that is entirely surrounded by two school divisions that either were granted a waiver pursuant to Chapter 3 of the Acts of Assembly of 2012, Special Session I, or would qualify for a good cause waiver pursuant to § 22.1-79.1 this section as it was in effect prior to July 1, 2019, for the 2019-2020 school year may open schools on the same opening date as either such surrounding school division.</p>
c. 650, 651	<p>1. § 1. § 10.1-1402.03. Closure of certain coal combustion residual units.</p> <p>A. For the purposes of this section only:</p> <p>"Carrying cost" means the cost associated with financing expenditures incurred but not yet recovered from the electric utility's customers, and shall be calculated by applying the electric utility's weighted average cost of debt and equity capital, as determined by the State Corporation Commission, with no additional margin or profit, to any unrecovered balances.</p> <p>"CCR landfill" means an area of land or an excavation that receives CCR and is not a surface impoundment, underground injection well, salt dome formation, salt bed formation, underground or surface coal mine, or cave and that is owned or operated by an electric utility.</p> <p>"CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area that (i) is designed to hold an accumulation of CCR and liquids; (ii) treats, stores, or disposes of CCR; and (iii) is owned or operated by an electric utility.</p> <p>"CCR unit" means any CCR landfill, CCR surface impoundment, lateral expansion of a CCR unit, or combination of two or more such units that is owned by an electric utility. Notwithstanding the provisions of 40 C.F.R. Part 257, "CCR unit" also includes any CCR below the unit boundary of the CCR landfill or CCR surface impoundment.</p> <p>"Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by an electric utility.</p> <p>"Encapsulated beneficial use" means a beneficial use of CCR that binds the CCR into a solid matrix and minimizes its mobilization into the surrounding environment.</p> <p>The above definitions <u>in this subsection</u> shall be interpreted in a manner consistent with 40 C.F.R. Part 257, except as expressly provided herein <u>in this section</u>.</p> <p>B. The owner or operator of any CCR unit located within the Chesapeake Bay watershed at the Bremo Power Station, Chesapeake Energy Center, Chesterfield Power Station, and Possum Point Power Station that ceased accepting CCR prior to July 1, 2019, shall complete closure of such unit by (i) removing all of the CCR in accordance with applicable standards established by Virginia Solid Waste Management Regulations (9VAC20-81) and (ii) either (a) beneficially reusing all such CCR in a recycling process for encapsulated beneficial use or (b) disposing of the CCR in a permitted landfill on the property upon which the CCR unit is located, adjacent to the property upon which the CCR unit is located, or off of the property on which the CCR unit is located, that includes, at a minimum, a composite liner and leachate collection system that meets or exceeds</p>

2019 Uncodified Acts and Enactments Assigned Code Section Numbers or Placed in Existing Code Sections
(as of May 1, 2019)

	<p>the federal Criteria for Municipal Solid Waste Landfills pursuant to 40 C.F.R. Part 258. The owner or operator shall beneficially reuse a total of no less than 6.8 million cubic yards in aggregate of such removed CCR from no fewer than two of the sites listed in this subsection where CCR is located.</p> <p>C. The owner or operator shall complete the closure of any such CCR unit required by this section no later than 15 years after initiating the closure process at that CCR unit. During the closure process, the owner or operator shall, at its expense, offer to provide a connection to a municipal water supply, or where such connection is not feasible provide water testing, for any residence within one-half mile of the CCR unit.</p> <p>D. Where closure pursuant to this section requires that CCR or CCR that has been beneficially reused be removed off-site, the owner or operator shall develop a transportation plan in consultation with any county, city, or town in which the CCR units are located and any county, city, or town within two miles of the CCR units that minimizes the impact of any transport of CCR on adjacent property owners and surrounding communities. The transportation plan shall include (i) alternative transportation options to be utilized, including rail and barge transport, if feasible, in combination with other transportation methods necessary to meet the closure timeframe established in subsection C, and (ii) plans for any transportation by truck, including the frequency of truck travel, the route of truck travel, and measures to control noise, traffic impact, safety, and fugitive dust caused by such truck travel. Once such transportation plan is completed, the owner or operator shall post it on a publicly accessible website. The owner or operator shall provide notice of the availability of the plan to the Department and the chief administrative officers of the consulting localities and shall publish such notice once in a newspaper of general circulation in such locality.</p> <p>E. The owner or operator of any CCR unit subject to the provisions of subsection B shall accept and review proposals to beneficially reuse any CCR that are not subject to an existing contractual agreement to remove CCR pursuant to the provisions of subsection B every four years beginning July 1, 2022. Any entity submitting such a proposal shall provide information from which the owner or operator can determine (i) the amount of CCR that will be utilized for encapsulated beneficial use; (ii) the cost of such beneficial reuse of such CCR; and (iii) the guaranteed timeframe in which the CCR will be utilized.</p> <p>F. In conducting closure activities described in subsection B, the owner or operator shall (i) identify options for utilizing local workers, (ii) consult with the Commonwealth's Chief Workforce Development Officer on opportunities to advance the Commonwealth's workforce goals, including furtherance of apprenticeship and other workforce training programs to develop the local workforce, and (iii) give priority to the hiring of local workers.</p> <p>G. No later than October 1, 2022, and no less frequently than every two years thereafter until closure of all of its CCR units is complete, the owner or operator of any CCR unit subject to the provisions of subsection B shall compile the following two reports:</p> <ol style="list-style-type: none"> 1. A report describing the owner's or operator's closure plan for all such CCR units; the closure progress to date, both per unit and in total; a detailed accounting of the amounts of CCR that have been and are expected to be beneficially reused from such units, both per unit and in total; a detailed accounting of the amounts of CCR that have been and are expected to be landfilled from such units, both per unit and in total; a detailed accounting of the utilization of transportation options and a transportation plan as required by subsection D; and a discussion of groundwater and surface water monitoring results and any measures taken to address such results as closure is being completed. 2. A report that contains the proposals and analysis for proposals required by subsection E. <p>The owner or operator shall post each such report on a publicly accessible website and shall submit each such report to the Governor, the Secretary of Natural Resources, the Chairman of the Senate Committee on Agriculture, Conservation and Natural Resources, the Chairman of the House Committee on Agriculture, Chesapeake and Natural Resources, the Chairman of the Senate Committee on Commerce and Labor, the Chairman of the House Committee on Commerce and Labor, and the Director.</p> <p>H. All costs associated with closure of a CCR unit in accordance with this section shall be recoverable through a rate adjustment clause authorized by the State Corporation Commission (the Commission) under the provisions of subdivision A 5 e of § 56-585.1 of the Code of Virginia, provided that (i) when determining the reasonableness of such costs the Commission shall not consider closure in place of the CCR unit as an option; (ii) the annual revenue requirement recoverable through a rate adjustment clause authorized under this act, exclusive of any other rate adjustment clauses approved by the Commission under the provisions of subdivision A 5 e of § 56-585.1 of the Code of Virginia, shall not exceed \$225 million on a Virginia jurisdictional basis for the Commonwealth in any 12-month period, provided that any under-recovery amount of revenue</p>
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	<p>requirements incurred in excess of \$225 million in a given 12-month period, limited to the under-recovery amount and the carrying cost, shall be deferred and recovered through the rate adjustment clause over up to three succeeding 12-month periods without regard to this limitation, and with the length of the amortization period being determined by the Commission; (iii) costs may begin accruing on July 1, 2019, but no approved rate adjustment clause charges shall be included in customer bills until July 1, 2021; (iv) any such costs shall be allocated to all customers of the utility in the Commonwealth as a non-bypassable charge, irrespective of the generation supplier of any such customer; and (v) any such costs that are allocated to the utility's system customers outside of the Commonwealth that are not actually recovered from such customers shall be included for cost recovery from jurisdictional customers in the Commonwealth through the rate adjustment clause.</p> <p>I. Any electric public utility subject to the requirements of this section may, without regard for whether it has petitioned for any rate adjustment clause pursuant to subdivision A 5 e of § 56-585.1 of the Code of Virginia, petition the Commission for approval of a plan for CCR unit closure at any or all of its CCR unit sites listed in subsection B. Any such plan shall take into account site-specific conditions and shall include proposals to beneficially reuse no less than 6.8 million cubic yards of CCR in aggregate from no fewer than two of the sites listed in subsection B. The Commission shall issue its final order with regard to any such petition within six months of its filing, and in doing so shall determine whether the utility's plan for CCR unit closure, and the projected costs associated therewith, are reasonable and prudent, taking into account that closure in place of any CCR unit is not to be considered as an option. The Commission shall not consider plans that do not comply with subsection B of this act.</p> <p>§-2. J. Nothing in this act <u>section</u> shall be construed to require additional beneficial reuse of CCR at any active coal-fired electric generation facility if such additional beneficial reuse results in a net increase in truck traffic on the public roads of the locality in which the facility is located as compared to such traffic during calendar year 2018.</p> <p>§-3. K. The Commonwealth shall not authorize any cost recovery by an owner or operator subject to the provisions of this act <u>section</u> for any fines or civil penalties resulting from violations of federal and state law or regulation.</p>
c. 682	<p><i>Codify as the second paragraph of subsection B of 24.2-506:</i></p> <p>1. § 1. That the <u>The</u> State Board of Elections, on or before January 1, 2020, shall revise its processes and associated regulations for reviewing and processing candidate petitions. Such revisions shall provide a process for checking petition signatures that includes a method for determining if a petition signature belongs to an individual whose prior registration has been canceled and the reason for such cancellation. The process shall provide for the tracking of such information associated with each petition. The process shall provide for the escalation of cases of suspected fraud to the electoral board, the State Board, or the office of the attorney for the Commonwealth, as appropriate.</p>
c. 748	<p>1. § 1. § 56-596.2:1. Energy conservation measures providing incentives for the development of electric energy derived from sunlight.</p> <p>A. Each Phase I and Phase II Utility, as such terms are defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, shall submit a petition for approval to design, implement and operate a three-year program of energy conservation measures providing:</p> <ol style="list-style-type: none"> 1. Incentives to low income, elderly, and disabled individuals in an amount not to exceed \$25 million in the aggregate for the installation of measures that reduce residential heating and cooling costs and enhance the health and safety of residents, including repairs and improvements to home heating and cooling systems and installation of energy-saving measures in the house, such as insulation and air sealing. In developing such incentive program, each utility shall utilize the stakeholder process set forth in § 56-596.2 of the Virginia Code. The utility may provide such incentives directly to customers or to organizations that assist low income, elderly, and disabled individuals. Such incentive program shall be deemed to be a part of the \$140 million in energy efficiency programs that a Phase I utility is required to develop pursuant to § 56-596.2 of the Virginia Code and a part of the \$870 million in energy efficiency programs that a Phase II utility is required to develop pursuant to § 56-596.2 of the Virginia Code; provided that no portion of such incentive programs shall be deemed to be a part of the required five percent of such energy conservation measures set aside for low income, elderly, and disabled individuals. 2. Incentives to low income, elderly, and disabled individuals, who also participate in the incentive program described above for the installation of measures that reduce residential heating and cooling costs, in an amount not to exceed \$25 million in the aggregate for the installation of equipment to develop electric energy derived from sunlight. The utility may provide such incentives directly to customers or to organizations

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	that assist low income, elderly, and disabled individuals. Such incentive program shall not be deemed to be a part of the \$140 million in energy efficiency programs that a Phase I utility is required to develop pursuant to § 56-596.2 of the Virginia Code nor a part of the \$870 million in energy efficiency programs that a Phase II utility is required to develop pursuant to § 56-596.2 of the Virginia Code . B. In developing such incentive programs, each utility shall give consideration to low income, elderly, and disabled persons residing in housing that a redevelopment and housing authority owns or controls.
c. 772	4. § 4. § 22.1-207.6. Military-connected students; National Math and Science Initiative. The Department of Education shall encourage school boards of school divisions that have a significant number of enrolled military-connected students to partner with the National Math and Science Initiative to provide such students with the tools and resources necessary to advance science, technology, engineering, and mathematics learning opportunities and career readiness. The Department shall provide technical assistance to any school board seeking to enter into such a partnership, upon request.
c. 776	4. § 1. That the § 32.1-326.4. Licensed provider; statement to prospective employer. The Board of Behavioral Health and Developmental Services shall amend regulations governing licensed providers to require that every licensed provider provide a statement regarding a current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia to any other licensed provider with which the current or past employee has applied for employment or to fill a role that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia . The statement shall address the character, ability, and fitness for employment in or to otherwise fill the role for which the person has applied and shall be provided upon receipt of a request for such information from the other licensed provider and written consent to the disclosure of such information executed by the current or past employee or other individual currently or previously associated with the provider in a capacity that requires a criminal history background check pursuant to § 37.2-416 or 37.2-506 of the Code of Virginia . Nothing in the amended regulations shall require disclosure of information subject to privilege or confidentiality pursuant to § 8.01-581.16, 8.01-581.17, or 32.1-127.1:03 of the Code of Virginia or federal law.
c. 792	4. § 1. That there § 15.2-816.1. Underground electric distribution lines; pilot program. <u>A. There</u> is hereby established a pilot program under which the governing body of any locality operating under the urban county executive form of government may request an electric utility to place underground electric distribution lines in transportation projects to serve and facilitate the creation of transit-oriented development in such locality in conjunction with a transportation infrastructure improvement project that the Commonwealth Transportation Board identifies that reduces congestion, improves mobility, incorporates transit systems, and improves safety. Such pilot program shall further an understanding of such underground electric distribution lines in regard to electric reliability, construction methods and related cost and timeline estimating, and the probability of meeting such projections. The pilot program shall consist of the approval to convert qualifying electric distribution lines in whole or in part underground in areas of transit-oriented developments in conjunction with a transportation infrastructure project the Commonwealth Transportation Board identifies. The pilot program shall terminate on July 1, 2022, after which date no agreement shall be entered into pursuant to § 2 of this act subsection B . The termination of the pilot program shall not affect any such agreement entered into prior to such date or any of the terms of such an agreement, including any additional levy imposed pursuant to such an agreement. § 2. B. The locality operating under the urban county executive form of government and the utility shall enter into an agreement that provides that (i) the locality shall pay to the utility its full additional costs of relocating and converting that portion of the line located in the locality underground rather than overhead that are not recoverable under applicable rates, net of relocation credits, which costs shall include associated feasibility costs, or any smaller portion of such costs as the utility and the locality may agree; (ii) the locality shall impose an additional levy on electric utility customers in the locality pursuant to § 58.1-3814 of the Code of Virginia in an amount sufficient to cover the utility's additional costs, which additional levy shall be collected by the utility on behalf of the locality; (iii) the utility shall convert, operate, and maintain the agreed portion of the line underground; and (iv) other terms and conditions on which the parties may agree shall be included in the agreement. § 3. C. If the locality operating under the urban county executive form of government and the utility enter into an agreement as described in § 2 of

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	<p>this act subsection B, the locality shall by ordinance fix the amount of such additional levy, which shall not exceed \$1 per month on residential customers. Any levy imposed pursuant to this act shall be in addition to the limit for any utility consumer tax prescribed in § 58.1-3814 of the Code of Virginia.</p> <p>§ 4. D. Upon presentation of the agreement to the Commonwealth Transportation Board, the Commissioner of Highways shall be responsible for securing the necessary easements and permits for the utility for the conversion of the existing distribution lines, based upon plans that the electric utility provides. The electric utility shall take such other actions as it deems appropriate in furtherance of the conversion of the approved distribution line, including acquiring the materials necessary for the underground installation.</p> <p>§ 5. E. If the provisions of this act section are inconsistent with the provisions of any other law or local ordinance, the provisions of this act section shall be controlling</p>
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cc. 9, 50 clause 2	<p><i>Codify as subsection E of § 8.01-420.4:1:</i></p> <p>2. That the E. The provisions of § 8.01-420.4:1 of the Code of Virginia, as created by this act, section apply to a subpoena issued pursuant to the Uniform Interstate Depositions and Discovery Act (§ 8.01-412.8 et seq. of the Code of Virginia) consistent with the provisions of subsection E of § 8.01-412.10 of the Code of Virginia.</p>
c. 535 clause 2	<p>2. That the § 56-585.1:10. Pilot program for transmission facilities serving business parks. The Virginia Economic Development Partnership shall conduct a pilot program within the certificated service territory of each investor-owned electric utility other than a utility described in subsection G of § 56-580 of the Code of Virginia (Pilot Utility) for the purpose of promoting economic development in areas of the Commonwealth designated as an opportunity zone listed by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service. The pilot program shall allow any Pilot Utility to complete the construction phase of a transmission line and associated substation to provide the electric infrastructure to a business park, as defined in § 56-576 of the Code of Virginia, as amended by this act, located in an opportunity zone within the Pilot Utility's certificated service territory where investments by an industrial development authority, or a similar political subdivision of the Commonwealth created pursuant to § 15.2-4903 of the Code of Virginia or other act of the General Assembly, in the siting, environmental review, pre-engineering design, and transmission right-of-way acquisition have been made prior to the public announcement of a prospective occupant of the business park. Each pilot program shall be subject to the following terms, conditions, and restrictions:</p> <p>a. 1. As used in this <u>enactment section</u>, "opportunity zone" means areas of the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.</p> <p>b. 2. The costs incurred by the Pilot Utility after January 1, 2019, to construct, operate, and maintain transmission lines and associated substations installed in order to provide service to a business park participating in the pilot program shall be recovered by the Pilot Utility pursuant to a rate adjustment clause approved by the Commission in subdivision A 4 of § 56-585.1 of the Code of Virginia, as amended by this act.</p> <p>c. 3. Qualifying projects shall have revenue sharing agreements between two or more localities.</p> <p>d. 4. Each individual qualifying project shall be less than seven miles in length.</p> <p>e. 5. The role of the Virginia Economic Development Partnership in conducting the pilot program is to certify that up to three petitions within the certificated service territory of each Pilot Utility addresses the eligibility criteria for participation in the pilot program set forth in § 56-576 of the Code of Virginia and in this <u>enactment section</u>.</p>