

Virginia Code Commission
Meeting Materials
August 19, 2019

Draft
VIRGINIA CODE COMMISSION

Monday, May 6, 2019 - 10:00 a.m.
Richmond, Virginia 23219

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

Members Absent: Samuel T. Towell

Staff Present: Scott Meacham, David Barry, Amigo Wade, Karen Perrine, Anne Bloomsburg, Andrew Kubincanek, Stephanie Kerns, Division of Legislative Services (DLS)

Others Present: Tom Lisk, Chair, Administrative Law Advisory Committee; Brian Kennedy, LexisNexis; Michael Skiffington and Larry Corkey, Department of Mines, Minerals and Energy

Call to order; welcome and introduction of new member: Senator Edwards, chair, called the meeting to order at 10:00 a.m. He introduced former Senator and Judge Malfourd Trumbo, who joins the Commission to replace former Senator Robert Calhoun, and welcomed him to the Commission.

Senator Edwards announced that E.M. Miller's appointment will end June 30, 2019, and thanked him for his service to the Commission, both as Executive Director of the Division of Legislative Services and as a member. Mr. Miller thanked Senator Edwards and expressed his gratitude to the Commission and Division of Legislative Services (DLS) staff. He stated that he had thoroughly enjoyed working with the Commission and staff, noting that he has been with the Commission for almost 30 years.

Approval of minutes: The minutes of the October 15, 2018, meeting of the Commission, as printed and distributed to the members, were approved without objection.

Administrative Law Advisory Committee (ALAC); members and work plan: Tom Lisk requested that the Commission reappoint two members of ALAC whose terms expire in May: Michael Quinan, attorney with Christian and Barton, LLP, and Paul Kugelman, Senior Assistant Attorney General, Office of the Attorney General. On motion of Senator Edwards, seconded by Mr. Nolen, the Commission approved the reappointments.

Mr. Lisk presented ALAC's work plan to continue the examination of executive branch review of regulatory actions and guidance documents. On motion of Mr. Nolen and duly seconded, the Commission approved the work plan.

Recodification of Title 45.1, Mines and Mining: Scott Meacham and David Barry presented a draft work plan and proposed organization of new Title 45.2 (a recodification of the existing Title 45.1) and a timeline for the project. The draft work plan provides for review of approximately half of the sections in Title 45.1 this year and completion of the recodification in 2020 with submission of a bill in the 2021 Session of the General Assembly. The new title will be divided into five subtitles: Administration, Coal Mines, Mineral Mines, Oil and Gas, and Other Forms of Energy. Upon motion of Delegate Leftwich, duly seconded, the work plan and proposed organization was approved.

Code of Virginia publication contract update: At its October 15, 2018, meeting, the Commission authorized staff to prepare a contract with LexisNexis for publication of the Code of Virginia beginning in November 2020, upon expiration of the current contract. Mr. Vucci reported that the new contract is complete and will be sent to LexisNexis and Senator Edwards for signature.

Renewal of contract for publication of the Virginia Administrative Code: Ms. Perrine stated that the current contract with Thomson Reuters-West for publication of the Virginia Administrative Code

expires April 30, 2020. The contract provides for renewal of the contract for a period of four years, and staff recommends renewal on the same terms as the current contract. On motion of Mr. Vucci, seconded by Ms. Davis, the Commission approved renewal of the contract until April 30, 2024.

Status of Code Commission bills for the 2019 Session of the General Assembly: Ms. Perrine stated that the three bills recommended by the Commission were enacted into law at the 2019 Session. The bills were: Recodification of Title 55 (SB 1080, Chapter 712), Title 15.2 "not set out" provisions with locality descriptions replaced with localities names (HB 2305, Chapter 632), and employment of the Registrar clarification (SB 1377, Chapter 362). Ms. Perrine said that all Title 15.2 (Counties, Cities and Towns) sections that are currently not set out will be set out in the July 2019 update of the Code of Virginia as previously approved by the Commission.

2019 Code Commission work plan: Ms. Perrine reviewed the Commission's 2019 draft work plan. The proposed plan included the Title 45.1 recodification, continued review of "not set out" sections in the Code of Virginia, and review of other sections of the Code that may benefit from restructuring. On motion of Delegate Leftwich, seconded by Mr. Trumbo, the work plan was approved.

Other business:

- At the request of Ms. Davis, Mr. Vucci reviewed criteria for a statute to be considered obsolete, such as a statute that has been deemed unconstitutional by the Virginia Supreme Court or the United States Supreme Court or a statute that has an expiration date that has passed. During the recodification or review of "not set out" or other Code sections, a section may be identified as obsolete and recommended for repeal pursuant to § 30-151 of the Code.

- Ms. Perrine reviewed the chart of Section 1 bills and enactment clauses from the 2019 Session of the General Assembly that were assigned a section number or placed in an existing section by the Executive Committee. The patron of each bill was notified of the codification. Staff explained the basis for codifying cc. 91, 97, and 294, which expressly mandated that the State Board of Social Services adopt into regulation certain specific requirements regarding assisted living facilities. Placing grants of regulatory authority into the Code of Virginia adds transparency and clarity to the agency's regulatory process and removes any doubt about whether the regulation remains within the parameters of its authority. Codification of acts that grant agencies the authority to adopt particular regulations also occurred in 2017 and 2018.

-Mr. Vucci introduced Stephanie Kerns, Administrative and Training Coordinator, DLS, who will be attending Commission meetings as the liaison between the Commission and DLS.

Public comment, adjournment: Senator Edwards opened the floor for public comment. As there was no public comment and no further business to discuss, the meeting adjourned at 11:00 a.m.

Virginia Code Commission
Recommendations for Sections Not Set Out in Titles 2.2 and 36

Title 2.2.
Administration of Government.

CHAPTER 45.
INVESTMENT OF PUBLIC FUNDS ACT.

§ 2.2-4503. Investments by Fairfax County finance director.

Notwithstanding any provisions of law to the contrary or any limitation or restriction contained in any such law, the director of finance of Fairfax County may invest, redeem, sell, exchange, and reinvest unexpended or surplus moneys, in any fund or account of which he has custody or control in bankers' acceptances.

(2001, c. 844.)

RECOMMENDATION: Set out in the Code using the current section number. All other sections of this chapter are set out in the Code.

CHAPTER 55.
VIRGINIA BIOTECHNOLOGY RESEARCH ACT.

§ 2.2-5500. ~~Purpose~~ Secretary of Commerce and Trade; cooperation with federal authorities.

~~The purposes of this chapter are to establish a state regulatory scheme to ensure state participation in the federal Coordinated Framework for the Regulation of Biotechnology to protect human health and the environment and to stimulate the growth of the biotechnology industry within the Commonwealth. To do this, the~~ The Secretary of Commerce and Trade shall cooperate with federal authorities ~~pursuant to~~ in accordance with the federal Coordinated Framework for the Regulation of Biotechnology to assess the potential risks and effects of proposed regulated introductions of genetically engineered organisms into the environment without undue governmental interference with the progress and commercial development of biotechnology within the Commonwealth. ~~The General Assembly does not intend to create a regulatory scheme that~~

~~duplicates federal regulatory efforts regarding biotechnology, or one that overly burdens biotechnology efforts within the Commonwealth. This chapter is intended to institute a process in which the Commonwealth can monitor the federal regulatory process and protect its interests in agriculture, public health, and the natural environment, as needed, by participation in the federal regulatory process.~~

(2001, c. 844.)

RECOMMENDATION: Set out in the Code using the current section number and (i) remove the provisions establishing the purpose and legislative intent of the chapter and (ii) adjust the catchline to reflect the changed content of the section. All other sections of this chapter are set out in the Code.

Title 36.

Housing.

CHAPTER 1.

HOUSING AUTHORITIES LAW.

Article 3.

General Powers of Authority.

§ 36-19.1. Special provisions; City of Roanoke.

~~Notwithstanding the provisions of the preceding section § 36-19, no authority heretofore or hereafter permitted, in any city containing more than ninety thousand but less than one hundred twenty five thousand inhabitants, established in the City of Roanoke to transact business and exercise powers as provided in Section § 36-4 shall make any contract for the construction of any housing unit not contracted for on the date this section becomes effective, or acquire land for or purchase material for the construction or installation of any housing units or projects not under construction or contracted for on such date, unless and until a comprehensive plan for such unit or project, shall have been submitted to and has been approved by the governing body of the city in which the authority is hereby authorized to transact business and exercise powers.~~

(1952, c. 200; 1975, c. 575.)

RECOMMENDATION: Set out in the Code using the current section number and replace population brackets with the name, City of Roanoke, for which the population bracket applied at the time the section became effective. Obsolete language is stricken exempting

contracts contracted before "the date this section becomes effective" and language is updated to reflect modern usage. Technical changes are made.

§ 36-19.4. Referendum prior to making cooperation agreements for public housing projects in ~~certain cities~~ the City of Portsmouth.

Notwithstanding the provisions of ~~Section~~ § 36-19, no authority ~~heretofore or hereafter~~ permitted to transact business and exercise powers as provided in ~~Section 36-4~~ shall, in any city containing a population in excess of seventy thousand but not in excess of ninety thousand, established in the City of Portsmouth shall make any cooperation agreement with the governing body of ~~such~~ the city for any public housing project that is not authorized or approved by the governing body of the city on or before July ~~one, nineteen hundred sixty 1,~~ 1, 1960, unless ~~or until~~ the execution of the a cooperation agreement for such public housing project ~~shall have~~ has been approved by a majority of the qualified voters of the city voting in an election called by the governing body of the city for ~~the~~ such purpose. The procedure for such election shall conform to general law. The provisions of this section shall not affect or impair the provisions of ~~Section~~ § 36-19.1 ~~of the Code~~, nor shall they apply to such low rent public housing units determined by the governing body of ~~such~~ the city as necessary for the satisfactory relocation of families to be displaced by ~~such~~ the city's Urban Renewal Program.

(1960, c. 490; 1975, c. 575.)

RECOMMENDATION: Set out in Code using the current section number and replace population brackets with the name, City of Portsmouth, for which the population bracket applied at the time the section became effective. Technical changes are made, including updating the catchline to reflect changes made to the section.

§ 36-27.1. ~~Same, Eminent domain; damages to leasehold interests in certain cities~~ the City of Waynesboro.

In ~~any city whose population is in excess of 15,500 and is not in excess of 17,000 in~~ considering the damages to be allowed under ~~Section~~ § 36-27 for property located in the City of Waynesboro, the court shall instruct the commissioners that damages shall be allowable for injury to leasehold interests in property adjoining, and operated jointly with, the land being condemned.

(1966, c. 383; 1975, c. 575.)

RECOMMENDATION: Set out in Code using the current section number and replace population brackets with the name, City of Waynesboro, for which the population bracket applied at the time the section became effective. Technical changes are made, including replacing "Same" in the catchline with the content of the catchline of the previous section at the time this section was enacted. The practice of using "same" to refer to the previous section's catchline is no longer used.

CHAPTER 4.

INDUSTRIALIZED BUILDING SAFETY LAW.

§ 36-72. Declaration of policy.

Industrialized building units and mobile homes, because of the manner of their construction, assembly, and use and that of their systems, components, and appliances ~~(including heating, plumbing, and electrical systems)~~, like other finished products having concealed vital parts, may present hazards to the health, life, and safety of persons and to the safety of property unless properly designed and manufactured. In the sale or rental of industrialized building units and mobile homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers or users or by the local building official. It is the policy and purpose of ~~this State~~ the Commonwealth to provide protection to the public against those possible hazards and to promote sound building construction, and for that purpose, to forbid the sale, rental, or use of new industrialized building units and mobile homes ~~which~~ that are not so constructed as to provide reasonable safety and protection to their owners and users and involve reasonably sound building practices. It is ~~the further~~ the policy of ~~this State~~ the Commonwealth to minimize the unique problems presented by a lack of uniform standards and inspection procedures affecting the mass production of housing and to hereby declare its intention to (i) encourage the reduction of construction costs and ~~to~~ (ii) make housing more feasible for all residents of the ~~State~~ Commonwealth.

(1970, c. 305; 1971, Ex. Sess., c. 103; 1986, c. 37.)

RECOMMENDATION: Set out in the Code using the current section number. All other sections of this chapter are set out in the Code. Technical changes are made.

CHAPTER 4.1.

MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS LAW.

§ 36-85.4. ~~Purpose and application~~ Applicability of chapter.

~~The primary purpose of this law is to provide for enforcement by Virginia of the Federal Act and the standards and regulations adopted by the Secretary under the authority granted by the Federal Act. Adoption of this law is intended to enable manufactured home inspection and enforcement activities to be performed by the Department. Any~~ This chapter shall apply to any manufactured home constructed on or after ~~the effective date of this chapter~~ July 1, 1986, or constructed on or after June 15, 1976, and formerly subject to the Federal Act or the Industrialized Building Unit and Mobile Home Safety Law (§ 36-70 et seq.), ~~shall be subject to this law.~~
(1986, c. 37.)

RECOMMENDATION: Set out in Code using the current section number with language relating to the purpose of the chapter removed. "Federal Act" is defined for the chapter as the National Manufactured Housing Construction and Safety Standards Act of 1974 as amended (42 U.S.C. § 5401 et seq.). Technical changes are made, including updating the catchline to reflect changes made to the section. All other sections of this chapter are set out in the Code.

To: Virginia Code Commission

Re: Recommendations for Sections Not Set Out in Title 57

Date: August 19, 2019

From: Brooks C. Braun, Attorney, Division of Legislative Services

1 **Drafting note: Sections 57-39.2 through 57-39.7 first became effective July 1, 1962**
2 **with amendments in 1964, 1985, and 1986 (See Appendix A).**

3 **§ 57-39.2. Reversion of unoccupied cemetery lots in cities and certain towns;**
4 **rebuttable presumption.**

5 The ownership of or right or interest in any unoccupied cemetery lot in any cemetery
6 located in any city or in any town in ~~any county, which county has a population of not less than~~
7 ~~24,500 nor more than 25,600~~ the Counties of Scott and Wythe, or in any town in any county
8 having the urban county executive form of government, which cemetery is under the ownership
9 and charge of such city or town, or any corporation, association, or trustees, shall, upon
10 abandonment, revert to such city, town, corporation, association, or trustees having ownership
11 and charge of the cemetery containing any such lot. The continued failure to maintain or care for
12 an unoccupied cemetery lot ~~in any cemetery~~ for a period of at least thirty years, ~~whether such~~
13 ~~period shall have elapsed prior to the effective date hereof or subsequent thereto~~, shall ~~create and~~
14 establish a rebuttable presumption that ~~the same~~ such lot has been abandoned.

15 **Drafting note: It is current policy of the Code Commission to replace population**
16 **brackets with the names of the affected counties. Assuming that the general assembly**
17 **intended that the most recent decennial census numbers would determine which localities**
18 **fell within the population brackets provided, at the time the population brackets became**
19 **law only Wythe County (in both 1964 and 1985) and Scott County (in 1985) would have**
20 **qualified. For this reason, it is suggested that the population brackets be struck and**
21 **replaced with the Counties of Scott and Wythe. 18 additional counties grew into one or**
22 **both of the relevant population brackets in the years after they were made law, and**
23 **therefore were eligible to take advantage of these provisions. See appendix B for details.**
24 **DLS staff will reach out to local government organizations to determine if any such**

25 **localities object to their exclusion and will report back to the Code Commission with**
26 **suggestions for amending legislation if necessary. Because it has been more than 30 years**
27 **since the effective date of this section, the clause allowing claims that stem from**
28 **abandonment prior to that date has been stricken as unnecessary. Technical changes and**
29 **changes to improve clarity are made.**

30 **Recommendation: Set out in Code using current section numbers and incorporating**
31 **the suggested amendments.**

32 **§ 57-39.3. Proceedings ~~in equity~~; determination of abandonment.**

33 Any city, town, corporation, association, or trustees having ownership and charge of a
34 cemetery ~~which that~~ is located in a city, or town in a county, as provided in ~~the preceding section~~
35 ~~(§ 57-39.2)~~, may file a ~~verified bill in equity petition~~ in the circuit court ~~having equity~~
36 ~~jurisdiction~~ within whose jurisdiction the cemetery is situated, setting forth its ~~or their~~ ownership
37 of the cemetery and facts relating to the continued failure by the owner of an unoccupied
38 cemetery lot in such cemetery to maintain and care for the same for at least ~~thirty~~ 30 consecutive
39 years immediately preceding ~~thereto, and pray~~ for an order adjudging any such lot to be
40 abandoned. Upon the filing of such ~~bill petition~~, the court upon proper motion shall set a date for
41 a hearing ~~thereon~~.

42 **Drafting note: References to courts of equity have been updated to reflect the**
43 **current structure of the Virginia judicial system. Technical changes are made.**

44 **Recommendation: Set out in Code using current section numbers and incorporating**
45 **the suggested amendments.**

46 **§ 57-39.4. Notice to owner of record; publication.**

47 ~~Not less than twenty~~ At least 20 days before the date fixed for the hearing, a notice
48 declaring that the unoccupied cemetery lot has been presumed to be abandoned, and setting forth
49 the date fixed for the hearing, shall be (i) (a) served personally upon the recorded owner thereof
50 or his heirs, if the recorded owner is known by the cemetery to be dead and upon such heirs
51 whose names and addresses have been filed with the cemetery, or ~~shall be~~ (b) served by mailing
52 the notice by registered mail to the last known address of the recorded owner thereof or his heirs,
53 if the recorded owner is known by the cemetery to be dead and to such heirs whose names and

54 addresses have been filed with the cemetery, and ~~by publishing the notice (ii) published~~ once a
55 week for four consecutive weeks in a newspaper having general circulation in the city or town in
56 which the cemetery is located. ~~Thereupon, it~~ It shall be the duty of such recorded owner or his
57 heirs, ~~as the case may be,~~ to appear and ~~make~~ answer to the allegations of ~~said bill and any a~~
58 petition filed pursuant to § 57-39.3. Any such appearance and answer shall rebut the presumption
59 of abandonment.

60 **Drafting note: References to courts of equity have been updated to reflect the**
61 **current structure of the Virginia judicial system. A cross reference is added. Changes to**
62 **improve clarity are made.**

63 **Recommendation: Set out in Code using current section numbers and incorporating**
64 **the suggested amendments.**

65 **§ 57-39.5. Judicial determination; conveyance of title.**

66 At the hearing authorized by ~~the preceding section § 57-39.4,~~ the proofs of the parties or
67 the petition in the event of the failure of the recorded owner or his heirs to appear and answer
68 shall be presented, and ~~if~~ the court shall determine ~~therefrom, or upon the verified bill in event of~~
69 ~~the failure of the recorded owner or his heirs, as the case may be, to appear and answer, that if~~
70 the unoccupied cemetery lot set forth in the ~~bill~~ petition has been abandoned, ~~-. If~~ the court ~~shall~~
71 ~~enter~~ enters a decree adjudging ~~the same such lot~~ to be abandoned, ~~and it~~ shall further provide
72 that the city, town, corporation, association, or trustees having ownership and charge of the
73 cemetery containing any such lot shall have the right to sell ~~the same, conveying good title~~
74 ~~thereto, such lot~~ and to use the proceeds ~~derived therefrom in the manner and~~ for the purposes
75 ~~hereinafter~~ provided by this article.

76 **Drafting note: References to courts of equity have been updated to reflect the**
77 **current structure of the Virginia judicial system. Technical changes and changes to**
78 **improve clarity are made.**

79 **Recommendation: Set out in Code using current section numbers and incorporating**
80 **the suggested amendments.**

81 **§ 57-39.6. Sale of abandoned cemetery lot.**

82 At any time after entry of the decree adjudicating any unoccupied cemetery lot to be abandoned
83 pursuant to § 57-39.5, the city, town, corporation, association, or trustees having ownership and
84 charge of the cemetery containing any such lot may sell ~~the same~~ such lot in accordance with the
85 rules and regulations of the cemetery then in force governing generally the sale of cemetery lots.
86 Any proceeds derived ~~therefrom~~ from this sale shall first be used to defray the costs and
87 expenses incurred in any abandonment proceedings, ~~and the balance thereof.~~ Unless otherwise
88 directed by the court, the remaining balance shall, ~~unless otherwise directed by the court,~~ be
89 placed in a special fund, known as the "Perpetual Care Fund" of the cemetery, to be used by the
90 cemetery solely for the future maintenance, care, and upkeep of the cemetery.

91 **Drafting note: A cross reference is added. Technical changes and changes to**
92 **improve clarity are made.**

93 **Recommendation: Set out in Code using current section numbers and incorporating**
94 **the suggested amendments.**

95 **§ 57-39.7. Applicability; abandonment determination limited in certain**
96 **circumstances.**

97 Sections 57-39.2 through 57.39.6 shall be construed to apply to and authorize a
98 determination of abandonment of any unoccupied part of a cemetery lot. In any proceeding to
99 determine the abandonment of an unoccupied part of a cemetery lot, the court shall ~~in the~~
100 ~~exercise of its equity jurisdiction,~~ also determine what part, if any, shall be considered as having
101 been abandoned. Such sections shall not be construed to apply to and authorize a determination
102 of abandonment of ~~the following: (1) (i)~~ that part of a cemetery lot wherein there has been an
103 interment; ~~or (2), (ii)~~ any cemetery lot or part thereof to which unrestricted fee simple title has
104 been conveyed by a cemetery; ~~or (3), or (iii)~~ any cemetery lot or part thereof for which perpetual
105 care has been provided by contract with the city, town, corporation, association, or trustees
106 having ownership and charge of the cemetery containing any such lot or part thereof.

107 **Drafting note: References to courts of equity have been updated to reflect the**
108 **current structure of the Virginia judicial system. Technical changes and changes to**
109 **improve clarity are made.**

110 **Recommendation: Set out in Code using current section numbers and incorporating**
111 **the suggested amendments.**

Appendix A: Acts of Assembly affecting §§ 57-39.2 through 57-39.7

1962 Va. Acts 264

An Act to empower the owners of certain cemeteries to acquire abandoned cemetery lots and to prescribe the procedure therein by adding to Chapter 3 of Title 57 of the Code of Virginia an Article 5, containing sections numbered 57-39.2, 57-39.3, 57-39.4, 57-39.5, 57-39.6 and 57-39.7.

[H 535]

Approved March 14, 1962

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Chapter 3 of Title 57 an Article 5, containing sections numbered 57-39.2, 57-39.3, 57-39.4, 57-39.5, 57-39.6 and 57-39.7, as follows:

§ 57-39.2. The ownership of or right or interest in any unoccupied cemetery lot in any cemetery located in any city having a population in excess of 180,000 but not exceeding 300,000, which cemetery is under the ownership and charge of such city, or any corporation, association or trustees, shall, upon abandonment, revert to such city, corporation, association or trustees having ownership and charge of the cemetery containing any such lot. The continued failure to maintain or care for an unoccupied cemetery lot in any cemetery for a period of at least thirty years, whether such period shall have elapsed prior to the effective date hereof or subsequent thereto, shall create and establish a rebuttable presumption that the same has been abandoned.

§ 57-39.3. Any city, corporation, association or trustees having ownership and charge of a cemetery which is located in a city, the population of which is set forth in the preceding section, may file a verified bill in equity in the circuit, corporation or city court having equity jurisdiction within whose jurisdiction the cemetery is situated, setting forth its or their ownership of the cemetery and facts relating to the continued failure by the owner of an unoccupied cemetery lot in such cemetery to maintain and care for the same for at least thirty consecutive years immediately preceding thereto, and pray for an order adjudging any such lot to be abandoned. Upon the filing of such bill, the court upon proper motion shall set a date for a hearing thereon.

§ 57-39.4. Not less than twenty days before the date fixed for the hearing, a notice declaring that the unoccupied cemetery lot has been presumed to be abandoned, and setting forth the date fixed for the hearing, shall be served personally upon the recorded owner thereof or his heirs, if the recorded owner is known by the cemetery to be dead and upon such heirs whose names and addresses have been filed with the cemetery, or shall be served by mailing the notice by registered mail to the last known address of the recorded owner thereof or his heirs, if the recorded owner is known by the cemetery to be dead and to such heirs whose names and addresses have been filed with the cemetery, and by publishing the notice once each week for four consecutive weeks in a newspaper having general circulation in the city in which the cemetery is located. Thereupon, it shall be the duty of such recorded owner or his heirs, as the case may be, to appear and make answer to the allegations of said bill and any such appearance and answer shall rebut the presumption of abandonment.

§ 57-39.5. At the hearing authorized by the preceding section, the proofs of the parties shall be presented and if the court shall determine therefrom, or upon the verified bill in event of the failure of the recorded owner or his heirs, as the case may be, to appear and answer, that the unoccupied cemetery lot set forth in the bill has been abandoned, the court shall enter a decree adjudging the same to be abandoned, and shall further provide that the city, corporation, association or trustees having ownership and charge of the cemetery containing any such lot shall have the right to sell the same, conveying good title thereto, and to use the proceeds derived therefrom in the manner and for the purposes hereinafter provided.

§ 57-39.6. At any time after entry of the decree adjudicating any unoccupied cemetery lot to be abandoned, the city, corporation, association or trustees having ownership and charge of the cemetery containing any such lot may sell the same in accordance with the rules and regulations of the cemetery then in force governing generally the sale of cemetery lots. Any proceeds derived therefrom shall first be used to defray the costs and expenses incurred in any abandonment proceedings, and the balance thereof shall, unless otherwise directed by the court, be placed in a special fund, known as the "Perpetual Care Fund" of the cemetery, to be used by the cemetery solely for the future maintenance, care and upkeep of the cemetery.

§ 57-39.7. §§ 57-39.2 through 57-39.6 shall be construed to apply to and authorize a determination of abandonment of any unoccupied part of a cemetery lot; provided, however, in any proceeding to determine the abandonment of an unoccupied part of a cemetery lot, the court shall in the exercise of its equity jurisdiction, also determine what part, if any, shall be considered as having been abandoned; but said sections shall not be construed to apply to and authorize a determination of abandonment of the following: (1) that part of a cemetery lot wherein there has been an interment; (2) any cemetery lot or part thereof to which fee simple title has been conveyed by a cemetery; or (3) any cemetery lot or part thereof

for which perpetual care has been provided by contract with the city, corporation, association or trustees having ownership and charge of the cemetery containing any such lot or part thereof.

1964 Va. Acts 111

An Act to amend and reenact §§ 57-39.2 through 57-39.7 of the Code of Virginia, which empower the owners of certain cemeteries to acquire abandoned cemetery lots and prescribe the procedure therein.

[H 339]

Approved February 26, 1964

Be it enacted by the General Assembly of Virginia:

1. That §§ 57-39.2 through 57-39.7 of the Code of Virginia be amended and reenacted as follows:

§ 57-39.2. The ownership of or right or interest in any unoccupied cemetery lot in any cemetery located in any city having a population in excess of 180,000 * or in any town in any county, which county has a population of not less than twenty-one thousand nine hundred fifty nor more than twenty-two thousand one hundred, which cemetery is under the ownership and charge of such city or town, or any corporation, association or trustees, shall, upon abandonment, revert to such city, town, corporation, association or trustees having ownership and charge of the cemetery containing any such lot. The continued failure to maintain or care for an unoccupied cemetery lot in any cemetery for a period of at least thirty years, whether such period shall have elapsed prior to the effective date hereof or subsequent thereto, shall create and establish a rebuttable presumption that the same has been abandoned.

§ 57-39.3. Any city, town, corporation, association or trustees, having ownership and charge of a cemetery which is located in a city, or town in a county, the population of which is set forth in the preceding section, may file a verified bill in equity in the circuit, corporation or city court having equity jurisdiction within whose jurisdiction the cemetery is situated, setting forth its or their ownership of the cemetery and facts relating to the continued failure by the owner of an unoccupied cemetery lot in such cemetery to maintain and care for the same for at least thirty consecutive years immediately preceding thereto, and pray for an order adjudging any such lot to be abandoned. Upon the filing of such bill, the court upon proper motion shall set a date for a hearing thereon.

§ 57-39.4. Not less than twenty days before the date fixed for the hearing, a notice declaring that the unoccupied cemetery lot has been presumed to be abandoned, and setting forth the date fixed for the hearing, shall be served personally upon the recorded owner thereof or his heirs, if the recorded owner is known by the cemetery to be dead and upon such heirs whose names and addresses have been filed with the cemetery, or shall be served by mailing the notice by registered mail to the last known address of the recorded owner thereof or his heirs, if the recorded owner is known by the cemetery to be dead and to such heirs whose names and addresses have been filed with the cemetery, and by publishing the notice once each week for four consecutive weeks in a newspaper having general circulation in the city or town in which the cemetery is located. Thereupon, it shall be the duty of such recorded owner or his heirs, as the case may be, to appear and make answer to the allegations of said bill and any such appearance and answer shall rebut the presumption of abandonment.

§ 57-39.5. At the hearing authorized by the preceding section, the proofs of the parties shall be presented and if the court shall determine

therefrom, or upon the verified bill in event of the failure of the recorded owner or his heirs, as the case may be, to appear and answer, that the unoccupied cemetery lot set forth in the bill has been abandoned, the court shall enter a decree adjudging the same to be abandoned, and shall further provide that the city, *town*, corporation, association or trustees having ownership and charge of the cemetery containing any such lot shall have the right to sell the same, conveying good title thereto, and to use the proceeds derived therefrom in the manner and for the purposes hereinafter provided.

§ 57-39.6. At any time after entry of the decree adjudicating any unoccupied cemetery lot to be abandoned, the city, *town*, corporation, association or trustees having ownership and charge of the cemetery containing any such lot may sell the same in accordance with the rules and regulations of the cemetery then in force governing generally the sale of cemetery lots. Any proceeds derived therefrom shall first be used to defray the costs and expenses incurred in any abandonment proceedings, and the balance thereof shall, unless otherwise directed by the court, be placed in a special fund, known as the "Perpetual Care Fund" of the cemetery, to be used by the cemetery solely for the future maintenance, care and upkeep of the cemetery.

§ 57-39.7. §§ 57-39.2 through 57-39.6 shall be construed to apply to and authorize a determination of abandonment of any unoccupied part of a cemetery lot; provided, however, in any proceeding to determine the abandonment of an unoccupied part of a cemetery lot, the court shall in the exercise of its equity jurisdiction, also determine what part, if any, shall be considered as having been abandoned; but said sections shall not be construed to apply to and authorize a determination of abandonment of the following: (1) that part of a cemetery lot wherein there has been an interment; (2) any cemetery lot or part thereof to which *unrestricted* fee simple title has been conveyed by a cemetery; or (3) any cemetery lot or part thereof for which perpetual *or annual* care has been provided by contract with the city, *town*, corporation, association or trustees having ownership and charge of the cemetery containing any such lot or part thereof.

1985 Va. Acts 414

An Act to amend and reenact Chapter 264 of the Acts of Assembly of 1962, as amended, and incorporated by reference in the Code of Virginia as §§ 57-39.2 and 57-39.7, relating to the acquisition of abandoned cemetery lots by cemetery owners.

[S 569]

Approved March 20, 1985

Be it enacted by the General Assembly of Virginia:

1. That Chapter 264 of the Acts of Assembly of 1962, as amended and incorporated by reference in the Code of Virginia in §§ 57-39.2 and 57-39.7 is amended and reenacted as follows:

§ 57-39.2. The ownership of or right or interest in any unoccupied cemetery lot in any cemetery located in any city having a population in excess of 180,000 or in any town in any county, which county has a population of not less than ~~twenty-one thousand nine hundred fifty~~ 24,500 nor more than ~~twenty-two thousand one hundred~~ 25,600 , or in any town in any county having the urban county executive form of government, which cemetery is under the ownership and charge of such city or town, or any corporation, association or trustees, shall, upon abandonment, revert to such city, town, corporation, association or trustees having ownership and charge of the cemetery containing any such lot. The continued failure to maintain or care for an unoccupied cemetery lot in any cemetery for a period of at least thirty years, whether such period shall have elapsed prior to the effective date hereof or subsequent thereto, shall create and establish a rebuttable presumption that the same has been abandoned.

§ 57-39.7. ~~§§~~ Sections 57-39.2 through 57-39.6 shall be construed to apply to and authorize a determination of abandonment of any unoccupied part of a cemetery lot ; ~~provided, however, in~~ . In any proceeding to determine the abandonment of an unoccupied part of a cemetery lot, the court shall in the exercise of its equity jurisdiction, also determine what part, if any, shall be considered as having been abandoned ; ~~but said~~ . Such sections shall not be construed to apply to and authorize a determination of abandonment of the following: (1) that part of a cemetery lot wherein there has been an interment; or (2) any cemetery lot or part thereof to which unrestricted fee simple title has been conveyed by a cemetery; or (3) any cemetery lot or part thereof for which perpetual ~~or annual~~ care has been provided by contract with the city, town, corporation, association or trustees having ownership and charge of the cemetery containing any such lot or part thereof.

1986 Va. Acts 118

An Act to amend and reenact Chapter 264 of the Acts of Assembly of 1962, as amended, and incorporated by reference in the Code of Virginia as §§ 57-39.2 and 57-39.3, relating to the ownership of an unoccupied and abandoned cemetery lot.

[H 54]

Approved March 23, 1986

Be it enacted by the General Assembly of Virginia:

1. That Chapter 264 of the Acts of Assembly of 1962, as amended, and incorporated by reference in the Code of Virginia as §§ 57-39.2 and 57-39.3 are amended and reenacted as follows:

§ 57-39.2. The ownership of or right or interest in any unoccupied cemetery lot in any cemetery located in any city ~~having a population in excess of 180,000~~ or in any town in any county, which county has a population of not less than 24,500 nor more than 25,600, or in any town in any county having the urban county executive form of government, which cemetery is under the ownership and charge of such city or town, or any corporation, association or trustees, shall, upon abandonment, revert to such city, town, corporation, association or trustees having ownership and charge of the cemetery containing any such lot. The continued failure to maintain or care for an unoccupied cemetery lot in any cemetery for a period of at least thirty years, whether such period shall have elapsed prior to the effective date hereof or subsequent thereto, shall create and establish a rebuttable presumption that the same has been abandoned.

§ 57-39.3. Any city, town, corporation, association or trustees, having ownership and charge of a cemetery which is located in a city, or town in a county, ~~the population of which is set forth as provided~~ in the preceding section (*§ 57-39.2*), may file a verified bill in equity in the circuit ; ~~corporation or city~~ court having equity jurisdiction within whose

jurisdiction the cemetery is situated, setting forth its or their ownership of the cemetery and facts relating to the continued failure by the owner of an unoccupied cemetery lot in such cemetery to maintain and care for the same for at least thirty consecutive years immediately preceding thereto, and pray for an order adjudging any such lot to be abandoned. Upon the filing of such bill, the court upon proper motion shall set a date for a hearing thereon.

Appendix B: Population table

Census numbers are from the decennial census conducted by the Federal Government.

Intercensal estimates are provided by the Weldon Cooper Center. Counties falling within the prescribed population bracket between the 1960 census and the change in the bracket in 1985 are indicated by a *. Counties falling within the prescribed population bracket between the 1985 amendments and 2018 are indicated by a ^. Underlined population counts indicate a population falling within one of the relevant population brackets.

	1960 Census	1964 Estimate	1980 Census	1985 Estimate	2010 Census	2018 Estimate
Virginia	3,966,966	4,095,000	5,346,818	5,715,100	8,001,024	8,517,685
Accomack	30,635	31,000	31,268	31,100	33,164	32,769
Albemarle	30,969	28,200	55,783	61,200	99,010	108,639
Alleghany	12,128	12,000	14,333	13,900	16,250	15,144
Amelia	7,815	7,900	8,405	8,300	12,690	12,995
Amherst	22,953	23,700	29,122	28,700	32,353	31,867
Appomattox	9,148	9,400	11,971	12,100	14,973	15,679
Arlington	163,401	168,400	152,599	165,400	207,627	241,031
Augusta	37,363	38,800	53,732	49,400	73,750	75,254
Bath	5,335	5,400	5,860	5,300	4,731	4,429
Bedford	25,107	25,800	34,927	39,200	74,898	78,329
Bland	5,982	6,000	6,349	6,400	6,824	6,432
Botetourt*^	16,715	17,200	23,270	23,800	33,148	33,288
Brunswick	17,779	17,900	15,632	15,900	17,434	16,481
Buchanan^	36,724	36,700	37,989	35,600	24,098	21,576
Buckingham	10,877	11,000	11,751	12,500	17,146	16,952
Campbell	32,958	34,700	45,424	46,100	54,842	55,425
Caroline^	12,725	13,100	17,904	18,200	28,545	30,292
Carroll	23,178	23,200	27,270	27,200	30,042	29,141
Charles City	5,492	5,700	6,692	6,500	7,256	7,017
Charlotte	13,368	13,500	12,266	11,800	12,586	12,021
Chesterfield	71,197	47,900	141,372	166,600	316,236	346,357
Clarke	7,942	8,100	9,965	10,900	14,034	14,400
Craig	3,356	3,400	3,948	4,100	5,190	5,094
Culpeper*^	15,088	15,700	22,620	23,900	46,689	51,282
Cumberland	6,360	6,400	7,881	7,900	10,052	9,820
Dickenson	20,211	20,000	19,806	19,600	15,903	14,516
Dinwiddie*^	22,183	22,900	22,602	21,000	28,001	28,502
Essex	6,690	6,800	8,864	8,800	11,151	10,780
Fairfax	261,417	274,800	596,901	714,900	1,081,699	1,145,978

Sections Not Set
Out in Title 57

8/19/2019

Braun, Brooks

Fauquier	24,066	25,000	35,889	40,800	65,203	70,150
Floyd	10,462	10,600	11,563	11,700	15,279	15,643
Fluvanna^	7,227	7,400	10,244	10,800	25,691	26,692
Franklin	25,925	26,600	35,740	36,900	56,159	56,127
Frederick*	21,941	23,100	34,150	37,500	78,305	87,776
Giles	17,219	17,500	17,810	17,200	17,286	16,931
Gloucester*^	11,919	12,400	20,107	25,600	36,858	37,194
Goochland	9,206	9,500	11,761	12,700	21,717	23,176
Grayson	17,390	16,700	16,579	16,500	15,533	15,330
Greene	4,715	4,900	7,625	8,800	18,403	19,959
Greensville	10,620	10,700	10,903	9,300	12,243	11,473
Halifax	39,611	40,000	37,692	36,600	36,241	34,647
Hanover	27,550	29,100	50,398	53,100	99,863	107,357
Henrico	117,339	123,600	180,735	197,800	306,935	326,993
Henry	40,335	42,300	57,654	57,800	54,151	51,438
Highland	3,221	3,200	2,937	2,800	2,321	2,265
Isle of Wight*^	17,164	17,600	21,603	23,300	35,270	37,492
James City*^	11,539	11,300	22,763	27,700	67,009	75,837
King and Queen	5,889	5,900	5,968	6,200	6,945	6,940
King George^	7,243	7,500	10,543	11,400	23,584	25,863
King William	7,563	7,700	9,334	9,800	15,935	16,916
Lancaster	9,174	9,300	10,129	10,500	11,391	10,979
Lee*^	25,824	25,500	25,956	25,800	25,587	23,994
Loudoun	24,549	26,300	57,427	67,200	312,311	406,355
Louisa^	12,959	13,300	17,825	18,800	33,153	36,021
Lunenburg	12,523	12,600	12,124	11,800	12,914	12,236
Madison	8,187	8,400	10,232	10,800	13,308	13,278
Mathews	7,121	7,200	7,995	8,300	8,978	8,704
Mecklenburg	31,428	31,700	29,444	29,500	32,727	30,985
Middlesex	6,319	6,400	7,719	8,200	10,959	10,889
Montgomery	32,923	35,000	63,516	67,300	94,392	99,433
Nelson	12,752	12,800	12,204	12,500	15,020	14,836
New Kent	4,504	4,700	8,781	9,200	18,429	22,462
Northampton	16,966	16,900	14,625	13,700	12,389	11,862
Northumberland	10,185	10,200	9,828	9,900	12,330	12,075
Nottoway	15,141	15,300	14,666	15,100	15,853	15,659
Orange^	12,900	13,200	18,063	19,000	33,481	35,582
Page	15,572	16,000	19,401	20,100	24,042	23,833
Patrick	15,282	15,500	17,647	17,500	18,490	17,790
Pittsylvania	58,296	59,400	66,147	55,400	63,506	61,640
Powhatan^	6,747	7,000	13,062	13,100	28,046	29,524
Prince Edward	14,121	14,400	16,456	16,700	23,368	23,249
Prince George*^	20,270	20,900	25,733	26,100	35,725	37,212
Prince William	41,267	56,300	144,703	174,100	402,002	463,046

Sections Not Set
Out in Title 57

8/19/2019

Braun, Brooks

Pulaski	27,258	28,000	35,229	35,200	34,872	34,183
Rappahannock	5,368	5,400	6,093	6,200	7,373	7,219
Richmond	6,375	6,500	6,952	6,900	9,254	9,145
Roanoke	45,635	45,400	72,945	75,500	92,376	93,672
Rockbridge	16,502	16,800	17,911	17,900	22,307	22,539
Rockingham	40,485	41,200	57,038	53,600	76,314	81,422
Russell	26,290	26,500	31,761	31,100	28,897	27,057
Scott^	25,813	26,100	<u>25,068</u>	<u>24,500</u>	23,177	22,121
Shenandoah*	21,825	22,300	27,559	28,900	41,993	42,940
Smyth	31,066	31,600	33,366	32,800	32,208	30,475
Southampton	19,931	20,100	18,731	17,600	18,570	17,851
Spotsylvania*	13,819	14,300	34,435	39,700	122,397	133,441
Stafford*	16,876	18,000	40,470	47,800	128,961	149,110
Surry	6,220	6,300	6,046	6,100	7,058	6,584
Sussex	12,411	12,500	10,874	10,400	12,087	11,473
Tazewell	44,791	44,900	50,511	49,100	45,078	41,973
Warren*^	14,655	15,000	21,200	22,600	37,575	39,630
Washington	38,076	39,100	46,487	45,700	54,876	53,992
Westmoreland	11,042	11,400	14,041	14,400	17,454	17,911
Wise	43,579	43,300	43,863	43,100	41,452	38,386
Wythe*^	<u>21,975</u>	22,400	<u>25,522</u>	<u>25,300</u>	29,235	28,650
York*	17,305	22,900	35,463	37,800	65,187	68,725

Proposed Reorganization of § 54.1-3408 and Related Sections

Section 54.1-3408 addresses the prescription, dispensation, and administration of controlled substances and other drugs by practitioners of medicine, osteopathy, podiatry, dentistry, and veterinary medicine; licensed nurse practitioners authorized to prescribe pursuant to § 54.1-2957.01; licensed physician assistants authorized to prescribe pursuant to § 54.1-2952.1; and TPA-certified optometrists authorized to prescribe pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1 of the Code of Virginia, as well as various other categories of individuals subject to a range of limitations and requirements.

Issue:

Section 54.1-3408 has become very long and unwieldy, containing subsections A through Z. New subsections are proposed each year, and this section will likely continue to grow.

Section 54.1-3408 includes provisions relating to (i) prescribing, (ii) dispensing, and (iii) administering of drugs and devices by numerous categories of health care providers and other individuals. Prescribing, dispensing, and administering are subject to different statutory requirements and restrictions. Some provisions apply to certain categories of individuals, others to specific types of drugs and devices. Some include additional restrictive criteria. The lack of organization makes this section difficult to navigate.

Proposal:

The proposed changes to § 54.1-3408 and related sections would:

- Retain only the provisions related to administration of drugs and devices in § 54.-3408. These provisions make up the most substantial portion of § 54.1-3408 and are not addressed elsewhere in the Code in a cohesive fashion.
- Move provisions related to prescription and dispensation of drugs and devices from § 54.1-3408 to either Chapter 33, which contains provisions governing the practice of pharmacy, or Chapter 34, which is the Drug Control Act.
- Bring diverse provisions relating to prescription of drugs and devices in several Code sections together in a cohesive group of sections governing the requirements that must be met for a prescription to be valid, the form of prescriptions, and the transmission of prescriptions. As these type of provisions are most appropriate for and consistent with the provisions of the Drug Control Act, provisions related to prescribing currently found in Chapter 33 (Pharmacy) will be moved to Chapter 34 (Drug Control Act), so that only sections dealing with the practice of pharmacy are in Chapter 33.
- Set out separately provisions governing the dispensing of drugs and devices by (i) practitioners of medicine, osteopathy, podiatry, dentistry, and veterinary medicine; (ii) licensed nurse practitioners authorized to prescribe pursuant to § 54.1-2957.01; (iii) licensed physician assistants authorized to prescribe pursuant to § 54.1-2952.1; (iv) TPA-certified optometrists authorized to prescribe pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1; and (vi) various other individuals in a separate section.

Sub.	Current	Proposed
A	<p>A practitioner of medicine, osteopathy, podiatry, dentistry, or vet. med. or a licensed NP, licensed PA, or TPA-certified optometrist shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes in the course of his professional practice</p>	<p>List of individuals who may prescribe - moved to definition of “prescriber” in § 54.1-3401</p> <p>Requirements re: prescribing (in good faith for medicinal or therapeutic purposes in the course of his professional practice) - added to new § 54.1-3408.001, “Requirements for prescriptions; issuance by prescriber; bona fide practitioner-patient or veterinarian-client-patient relationship required; exceptions.”</p> <p style="padding-left: 40px;">NOTE that similar language can already be found in existing § 54.1-3303; that language is also moved to new § 54.1-3408.001.</p> <p>Requirements for administering - moved to new subsection A</p> <p>Requirements for dispensing - moved to new § 54.1-3410.1, “Dispensing by person other than pharmacist.”</p>
B	<p>The prescribing practitioner’s order may be on a written prescription or pursuant to an oral prescription ...</p> <p>The prescriber may administer the drugs and devices or he may cause drugs and devices to be administered by:</p> <ol style="list-style-type: none"> 1. A nurse, PA or intern who is under his direction and supervision 2. Persons trained to administer drugs and devices to persons in state-owned or state-operated hospitals or facilities licensed as hospitals by VDH or DBHDS who administer drugs under control and supervision of the prescriber or a pharmacist 3. EMS personnel certified and authorized to administer drugs and devices pursuant to regulations of the BoH who act within the scope of such certification and pursuant to an oral or written order or standing protocol 4. A Licensed Res. Care Therapist who administers, by means of inhalation, controlled substances used in inhalation or respiratory therapy 	<p>First sentence re: form of prescription (written or oral prescription) - moved to § 54.1-3408.001, new subsection A</p> <p>Remainder of this section, re: administration of drugs and devices:</p> <ul style="list-style-type: none"> • By a prescriber - moved to § 54.1-3408(A)(1) • By a nurse - moved to new § 54.1-3408(A)(4) for registered nurse, or new § 54.1-3408(A)(5) for licensed practical nurse • By a PA - moved to new § 54.1-3408(A)(3) • By an intern - moved to new § 54.1-3408(A)(2) • By a person trained to administer drugs and devices in state owned or state-operated hospitals, etc. - moved to new § 54.1-3408(A)(6) • By EMS personnel - moved to new § 54.1-3408(A)(9) ... NOTE the updated terminology, “EMS personnel” replaced with language from definition of “EMS personnel” in § 32.1-111.1 • By a licensed respiratory care therapist - moved to new § 54.1-3408(A)(7)

<p>C</p>	<p>Pursuant to oral or written order or standing protocol, prescriber who is authorized by state or federal law to possess and administer radiopharmaceuticals in the scope of his practice may authorize a nuclear medicine tech. to admin radiopharmaceuticals used in the dx or tx of disease under his supervision</p>	<p>Moved to new § 54.1-3408(A)(14)</p>
<p>D</p>	<p>Pursuant to oral or written order or standing protocol issued by the prescriber in the course of his professional practice, prescriber may authorize RNs and LPNs to possess:</p> <ul style="list-style-type: none"> (i) epinephrine and oxygen for administration in tx of emergency medical conditions; and (ii) heparin and sterile normal saline to use for the maintenance of IV access lines <p>Pursuant to regulations of the BoH, certain EMS providers may possess and admin epinephrine in emergency cases of anaphylactic shock</p> <p>Pursuant to an order or standing protocol issued by the prescriber in the course of his professional practice any of the following authorized by the prescriber and trained in the admin of epinephrine may possess and admin epinephrine:</p> <ul style="list-style-type: none"> • school nurse, school board employee, employee of local governing body, employee of local health department • employee of a school for students with disabilities ... or employee of a private school • employee of a public ... or private institution of higher education • any employee of an organization providing outdoor educational experiences or programs for youth 	<p>Epinephrine and oxygen - moved to new § 54.1-3408(A)(4)(i) for RNs, moved to new § 54.1-3408(A)(5)(i) for LPNs</p> <p>Heparin and sterile normal saline - moved to new § 54.1-3408(A)(4)(ii) for RNs, moved to new § 54.1-3408(A)(5)(ii) for LPNs</p> <p>Moved to new § 54.1-3408(A)(6)(i).</p> <p>NOTE current language, “emergency medical technician,” is an obsolete term; has been replaced with either “EMS provider” or “EMS personnel” depending on context; confirm appropriate terminology here</p> <p>School nurse - moved to new § 54.1-3408(A)(20)</p> <p>School board employee - moved to new § 54.1-3408(A)(18)(i)</p> <p>Employee of a local governing body - moved to new § 54.1-3408(A)(21)</p> <p>Employee of a local health department moved to new § 54.1-3408(A)(22)</p> <p>Employee of school for students with disabilities - moved to new § 54.1-3408(A)(23)(i)</p> <p>Employee of a private school - moved to new § 54.1-3408(A)(19)(i)</p> <p>Employee of a public or private institution of higher education - moved to new § 54.1-3408(A)(24)(i)</p> <p>Employee of an organization providing outdoor educational experiences or programs for youth - moved to new § 54.1-3408(A)(25)</p>

	<p>Pursuant to an order by the prescriber in the course of his professional practice, an employee or contractor of a DBHDS licensed provider may possess and admin epinephrine provided such person is authorized and trained to admin epinephrine</p> <p>Pursuant to an oral or written order or standing protocol issued by the prescriber in the course of his professional practice, prescriber may authorize pharmacists to possess epinephrine and oxygen for admin to tx emergency medical conditions</p>	<p>Moved to new § 54.1-3408(A)(17)(i)</p> <p>Moved to new § 54.1-3408(A)(10)(i)</p>
E	<p>Pursuant to oral or written order or standing protocol issued by the prescriber in the course of his professional practice such prescriber may authorize physical therapists to possess and administer topical corticosteroids, topical lidocaine, and other Schedule VI topical drugs</p>	<p>Moved to new § 54.1-3408(A)(11)</p>
F	<p>Pursuant to oral or written order or standing protocol issued by the prescriber in the course of his professional practice, such prescriber may authorize licensed athletic trainers to possess and administer:</p> <ul style="list-style-type: none"> • topical corticosteroids, topical lidocaine, and other Schedule VI topical drugs • oxygen for use in emergency situations • epinephrine for use in emergency cases of anaphylactic shock 	<p>Moved to new § 54.1-3408(A)(12)</p>
G	<p>Pursuant to oral or written order or standing protocol issued by the prescriber in the course of his professional practice ...</p> <p>And in accordance with policies and guidelines established by the BoH pursuant to § 32.1-50.2 (subsection includes rules for BoH policies and guidelines) ...</p> <p>Prescriber may authorize RN or LPN who is acting under supervision of RN to possess and admin tuberculin purified protein derivative (PPD) in absence of prescriber</p>	<p>Moved to new § 54.1-3408(A)(4)(a) for RNs</p> <p>Moved to new § 54.1-3408(A)(5) for LPNs</p> <p>This paragraph moved to Title 32.1</p>

	<p>Standing protocol must shall explicitly describe categories of individuals to whom test is to be administered and shall provide for appropriate medical evaluation for positive result. Prescriber shall ensure that nurse implementing standing protocols has received adequate training ...</p> <p>Commissioner ... may authorize RNs acting as agents of VDH to possess and administer PPD to those persons in whom tuberculin skin testing is indicated based on protocols and policies established by VDH</p>	<p>Moved to new § 54.1-3408(A)(4)(b)</p>
<p>H</p>	<p>Pursuant to oral or written order or standing protocol issued by the prescriber in the course of his professional practice ...</p> <p>Prescriber may authorize the following who are trained in the admin of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia:</p> <ul style="list-style-type: none"> (i) an employee of school board, a school for students with disabilities, or a private schoo; or (ii) employee of a public or private institution of higher education <p>Authorization only effective when licensed nurse, NP, physician, or PA is not present to perform administration of medication</p> <p>Pursuant to written order issued by the prescriber in the course of his professional practice ...</p> <p>Prescriber may authorize the following who are trained in the admin of insulin and glucagon to assist with the administration of insulin or administer glucagon to a person diagnosed as having diabetes and who requires insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia:</p> <ul style="list-style-type: none"> employee or contractor of a private provider licensed by DBHDS 	<p>Employee of a school board - moved to new § 54.1-3408(A)(18)(ii) and (iii)</p> <p>Employee of school for students with disabilities - moved to new § 54.1-3408(A)(23)(ii) and (iii)</p> <p>Employee of a private school - moved to new § 54.1-3408(A)(19)(ii) and (iii)</p> <p>Employee of a public or private institution of higher education - moved to new § 54.1-3408(A)(24)(ii) and (iii)</p> <p>Moved to new § 54.1-3408(A)(17)(ii) and (iii)</p>

<p>I</p>	<p>Pursuant to a protocol authorized by BoN, prescriber may authorize administration of vaccines to adults for immunization, in the absence of a prescriber, by:</p> <ul style="list-style-type: none"> (i) Licensed pharmacist (ii) RN (iii) LPN under supervision of RN <p>Prescriber acting on behalf of and in accordance with protocols of VDH may authorize administration of vaccines to any person when the prescriber is not physically present by:</p> <ul style="list-style-type: none"> (a) Pharmacist (b) Nurse (c) Designated EMS provider who holds ALS certificate who is acting under direction of OMD <p>EMS provider who does this must provide documentation of vaccine to be recorded in the VIIS</p>	<p>Licensed pharmacist - moved to new § 54.1-3408(A)(8)(ii) RN - moved to new § 54.1-3408(A)(4)(iii) LPN - moved to new § 54.1-3408(A)(5)(iii)</p> <p>Licensed pharmacist - moved to new § 54.1-3408(A)(8)(iii) RN - moved to new § 54.1-3408(A)(4)(iv) LPN - moved to new § 54.1-3408(A)(5)(iv) EMS provider - moved to new § 54.1-3408(A)(8)(ii)</p>
<p>J</p>	<p>Dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by:</p> <ul style="list-style-type: none"> (i) Dental hygienist (ii) Authorized agent of the dentist <p>Pursuant to a written order and in accordance with a standing protocol issued by a dentist in the course of his professional practice, dentist may authorize a dental hygienist under his general supervision to possess and administer topical oral fluorides, topical oral anesthetics, topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions, and any other Schedule VI topical drug approved by the BoD</p> <p>Dentist may authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons older age 18 or older, schedule VI local anesthesia</p>	<p>Dental hygienist - moved to new § 54.1-3408(A)(15)(i) Authorized agent - moved to new § 54.1-3408(A)(16)</p> <p>Moved to new § 54.1-3408(A)(15)(ii)</p> <p>Moved to new § 54.1-3408(A)(15)(iii)</p>

	<p>Continued competency for such administration shall be evaluated semi-annually by a registered nurse</p>	
<p>M</p>	<p>Registered medication aides ... may administer drugs that would otherwise be self-administered to residents of a licensed ALF</p> <p>Shall administer ...in accordance with prescribers instructions, regulations of the BoP related to security and recordkeeping, and ALF Medication Management Plan, and such other regulations governing practice of registered medication aides adopted by the BoN</p>	<p>Moved to new § 54.1-3408(A)(26)</p>
<p>N</p>	<p>This section shall not prevent administration of drugs by a person who administers in accordance with physician’s instructions and with written authorization of a parent and in accordance with school board regulations when drugs administered would normally be self-administered by a student in a public school</p> <p>Requirements re: training - through program approved by local school boards, in consultation with local department of health</p>	<p>Moved to new § 54.1-3408(A)(28)</p>
<p>O</p>	<p>Section shall not prevent administration of drugs by a person to:</p> <ul style="list-style-type: none"> (i) A child in a child day program regulated by DSS or local government (ii) Student of a private school <p>Provided such person:</p> <ul style="list-style-type: none"> (a) has completed training program; (b) has obtained written authorization of parent or guardian; (c) administers only to the child identified on the rx label in accordance with prescriber’s instructions; and (d) administers only those drugs dispensed from a pharmacy and maintained in an original, labeled container that would normally be self-administered by the child or student or administered to the child or student by his parent 	<p>Moved to new § 54.1-3408(A)(29)</p>

<p>P</p>	<p>This section shall not prevent administration or dispensing of drugs and devices by persons authorized by the Commissioner in accordance with protocols established by the Commissioner pursuant to § 32.1-42.1 when:</p> <ul style="list-style-type: none"> (i) Governor has declared disaster or emergency or US Sec. HHS has declared actual or potential bioterrorism incident or other actual or potential public health emergency, (ii) It is necessary to permit the provision of needed drugs or devices, and (iii) Such persons have received training necessary to safely administer or dispense needed rugs or devices <p>Must administer or dispense drugs or devices under direction, control, and supervision of Commissioner</p>	<p>Moved to new § 54.1-3408(A)(30)</p>
<p>Q</p>	<p>Nothing in this title shall prohibit the administration of normally self-administered drugs by unlicensed individuals to a person in his private residence</p>	<p>Moved to a new section in Chapter 34 NOTE the use of the term “title” - is this appropriate?</p>
<p>R</p>	<p>This section shall not interfere with any prescriber issuing prescriptions in compliance with his authority and scope of practice and the provisions of this section to a Board agent for use pursuant to § 18.2-258.1(G); such prescriptions shall be deemed valid prescriptions</p>	<p>Moved to new § 54.1-3408.001, subsection H</p>
<p>S</p>	<p>Nothing in this title shall prevent or interfere with dialysis care technicians or dialysis patient care technicians who are certified by an organization approved by the BoHP or person authorized for provision practice pursuant to Chapter 27.01, in the ordinary course of their duties in a Medicare-certified rental dialysis facility from administering heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers for the purpose of facilitating renal dialysis treatment when such administration occurs under the orders of a licensed physician, NP, or PA and under the immediate and direct supervision of a licensed RN</p>	<p>Moved to a new section in Chapter 34 NOTE the use of the term “title” - is this appropriate?</p>

	<p>Nothing in this chapter shall be construed to prohibit a patient care dialysis technician trainee from performing dialysis care as part of and within the scope of the clinical skills instruction segment of a supervised dialysis technician training program, provided such trainee is identified as such while working in the renal dialysis facility</p> <p>A dialysis care technician or dialysis patient care technician administering drugs shall demonstrate competency as evidenced by holding a valid certification from an organization approved by the BoHP pursuant to Chapter 27.01</p>	
T	<p>Persons who are otherwise authorized to administer controlled substances in hospitals shall be authorized to administer influenza or pneumococcal vaccines pursuant to § 32.1-126.4</p>	<p>Moved to new § 54.1-3408(A)(31)</p>
U	<p>Pursuant to a specific order for a patient and under his direct and immediate supervision, a prescriber may authorize the administration of controlled substances by personnel who have been properly trained to assist a doctor of medicine or osteopathic medicine, provided the method does not include IV, intrathecal, or epidural administration and the prescriber remains responsible for such administration</p>	<p>Moved to new § 54.1-3408(A)(13)</p>
V	<p>A PA, nurse, or dental hygienist may possess and administer topical fluoride varnish to the teeth of a child aged six months to three years pursuant to an oral or written order or standing protocol issued by a doctor of medicine, osteopathic medicine, or dentistry that conforms to standards adopted by VDH</p>	<p>PA - moved to new § 54.1-3408(A)(3) RN - moved to new § 54.1-3408(A)(4)(v) LPN - moved to new § 54.1-3408(A)(5)(n) Dental hygienist - moved to new § 54.1-3408(A)(15)(iv)</p>
W	<p>A prescriber, acting in accordance with guidelines adopted pursuant to § 32.1-46.02, may authorize administration of influenza vaccine to minors by a licensed pharmacist, RN, or LPN under direction and immediate supervision of an RN, or EMS provider who holds an ALS certification when the prescriber is not physically present</p>	<p>Pharmacist - moved to new § 54.1-3408(A)(10)(iv) RN - moved to new § 54.1-3408(A)(4)(iv) LPN - moved to new § 54.1-3408(A)(5)(iv) EMS provider - moved to new § 54.1-3408(A)(8)(iii)</p>

<p>X</p>	<p>Notwithstanding § 54.1-3303, pursuant to an oral, written or standing order issued by a prescriber or a standing order issued by the Commissioner ... authorizing the dispensing of naloxone ... in the absence of an oral or written order for a specific patient issued by a prescriber, and in accordance with protocols of the BoP in consultation with the BoM and VDH, a pharmacist may dispense naloxone ... and a person may possess and administer naloxone ...</p> <p>Any of the following who have completed a training program and who act in accordance with protocols developed by the BoP in consultation with the BoM and VDH may possess and administer naloxone: law-enforcement officer, DFS, OCME, DGS DCLS, DOC emp. designated as parole officer or correctional officer, and firefighters</p>	<p>Moved to new § 54.1-3431.1</p>
<p>Y</p>	<p>Notwithstanding any other law or regulation, a person who is authorized by DBHDS to train individuals on the administration of naloxone for use in opioid overdose reversal and who is acting on behalf of an organization that provides services to individuals at risk of experiencing an overdose or training in administration of naloxone for overdose reversal and that has obtained a controlled substances registration from the BoP may dispense naloxone to a person who has completed a training program ... approved by DBHDS, provided such dispensing is:</p> <ul style="list-style-type: none"> (i) Pursuant to a standing order issued by a prescriber (ii) In accordance the protocols of the BoP/BoM and VDH (iii) Without charge or compensation <p>Dispensing may occur at a site other than that of the controlled substances registration provided the entity possessing the registration maintains records in accordance with regulations of the BoP</p> <p>A person to whom naloxone has been dispensed pursuant to this section may possess and administer</p>	<p>Moved to new § 54.1-3431.1</p>

<p>Z</p>	<p>Pursuant to a written order or standing protocol issued by a prescriber in the course of his professional practice, a prescriber may authorize an employee of a school board, a school for students with disabilities, or a private school to administer injected medications for the treatment of adrenal crisis resulting from a condition causing adrenal insufficiency to a student diagnosed with a condition causing adrenal insufficiency when the student is believed to be experiencing or about to experience an adrenal crisis, provided such employee is trained in the administration of injected medications for the treatment of adrenal insufficiency and such employee is acting with the consent of the student's parents</p> <p>Such authorization shall only be effective when a licensed nurse, NP, physician, or PA is not present to perform the administration of the medication</p>	<p>Employee of a school board - moved to new § 54.1-3408(A)(18)(iv)</p> <p>Employee of school for students with disabilities - moved to new § 54.1-3408(A)(23)(iv)</p> <p>Employee of a private school - moved to new § 54.1-3408(A)(19)(iv)</p>
----------	---	--

Proposed Reorganization of § 54.1-3408 and Related Sections

<p>§ 54.1-3222</p>	<p>TPA certification; certification for treatment of diseases or abnormal conditions with TPAs.</p> <p>This section addresses use of controlled substances by TPA-certified optometrists.</p>	<p>Amend subsection B, adding language from existing § 54.1-3303(I) to clarify the controlled substance a TPA-certified optometrist may prescribe and administer.</p>
<p>§ 54.1-3303</p>	<p>Prescriptions to be issued and drugs to be dispensed for medical or therapeutic purposes only.</p>	<p>Generally, the changes to this section strip out provisions related to prescribing of prescriptions, leaving only provisions related to filling of prescriptions (i.e., the practice of pharmacy).</p> <p>Subsection D (requiring a bona fide practitioner-patient-pharmacist relationship) and subsection F (allowing a pharmacist to dispense a controlled substance pursuant to prescription of an out-of-state practitioner) remain and are renumbered to subsections A and B.</p> <p>The following sections are moved:</p> <p>Subsection A, who may issue a prescription - moved to definition of “prescriber” and new § 54.1-3408.001 (Requirements of prescriptions; etc.)</p> <p>Subsection B, requirement for bona fide practitioner-patient relationship; establishing relationship through telemedicine</p> <ul style="list-style-type: none"> • ¶ 1, requirement that prescription shall only be issued to patient with whom the practitioner has a bona fide relationship - moved to new § 54.1-3408.001(A) • ¶ 2, requirements of bona fide practitioner-patient relationship - moved to new § 54.1-3408.001(B) • ¶ 3, description of what a practitioner may prescribe - moved to new § 54.1-3408.001(D), ¶ 1 • ¶ 3, description of what a practitioner may prescribe when examination conducted by telemedicine - moved to new § 54.1-3408.001(D), ¶ 3 • ¶ 4, requirements of prescribing schedule VI controlled substances via telemedicine - moved to new § 54.1-3408.001(D), ¶ 2 • ¶ 5, requirements of bona fide veterinarian-client-patient relationship - moved to new § 54.1-3408.001(C)

		<p>Subsection C, prescription only for medicinal or therapeutic purposes in the usual course of treatment or for research; prohibition on prescribing with knowledge that controlled substance will be used otherwise - moved to new § 54.1-3408.001(A)</p> <p>Subsection E, prescription for close contacts of diagnosed patient - moved to new § 54.1-3408.001(E)</p> <p>Subsections G and H, these provisions are already covered in sections governing prescriptive authority of NPs and PAs</p> <p>Subsection I, prescriptive authority of TPA-certified optometrists - moved to § 54.1-3222, governing prescriptive authority of TPA-certified optometrists</p> <p>Subsection J, description of when requirements of bona fide practitioner-patient relationship deemed satisfied by member or committee of hospital's medical staff - moved to new § 54.1-3408.001(F)</p> <p>Subsection K, description of when prescriber may authorize RN or LPN to approve additional refills of prescription drugs - moved to new § 54.1-3408.001(G)</p>
§ 54.1-3401	Definitions.	Amends definition of “prescriber” to include language from § 54.1-3408(A)
§ 54.1-3408	<p>Professional use by practitioners.</p> <p>This section currently addresses prescribing, administering, and dispensing of drugs and devices by prescribers.</p>	<p>See document “Proposed Changes to § 54.1-3408” for explanation.</p> <p>Generally, proposed changes split existing § 54.1-3408, moving language relating to prescribing of controlled substances to Chapter 33 or new § 54.1-3408.001 or § 54.1-3408.01 and dispensing of controlled substances to new § 54.1-3410.3. Language relating to administering drugs and devices remains in the revised § 54.1-3408.</p>
<p>§ 54.1-3408.001</p> <p>NEW SECTION</p>	<p>Requirements for prescriptions; issuance by prescriber; bona fide practitioner-patient or veterinarian-client-patient relationship required; exceptions.</p>	<p>Subsection A, requirement for bona fide relationship with patient - moved from § 54.1-3303(B), ¶ 1; also includes language regarding prescriptions for medicinal or therapeutic purposes from § 54.1-3303(C)</p> <p>Subsection B, description of when bona fide practitioner-patient relationship established - moved from § 54.1-3303(B), ¶ 2</p> <p>Subsection C, description of when bona fide veterinarian-client-patient relationship established - moved from § 54.1-3303(B), ¶ 5</p> <p>Subsection D, description of what a prescriber may prescribe, including when using telemedicine - moved from § 54.1-3303(B), ¶ 3 and ¶ 4</p>

		<p>Subsection E, prescriptions for close contacts of diagnosed patient - moved from § 54.1-3303(E)</p> <p>Subsection F, description of when requirements of bona fide practitioner-patient relationship deemed satisfied by member or committee of hospital's medical staff - moved from § 54.1-3303(J)</p> <p>Subsection G, description of when prescriber may authorize RN or LPN to approve additional refills of prescription drugs - moved from § 54.1-3303(K)</p> <p>Subsection H, provision that nothing shall interfere with prescriber issuing prescriptions in compliance with his authority and scope of practice, etc., to an agent of the Board for use pursuant to subsection G of § 18.2-258.1 - moved from § 54.1-3408(R)</p>
§ 54.1-3408.01	<p>Requirements for prescriptions.</p> <p>ADDING: form of prescription</p>	<p>Subsection A (new), moved from existing subsection B of this section; also includes language from § 54.1-3408(B)</p> <p>Subsection B (new), renumbered from subsection A to subsection B; language in ¶ 3 moved to a new ¶ 4.</p> <p>Subsection B (existing), form of orders for administration to certain patients; how such orders transmitted - moved to § 54.1-3408.02 as new subsection B (will be subsection C effective July 1, 2020)</p> <p>Subsection C (existing), transmission of oral prescriptions - moved to § 54.1-3408.02 as new subsection C (will be subsection D effective July 1, 2020)</p>
54.1-3408.02	<p>Transmission of prescriptions.</p> <p>Section is now about how prescriptions are transmitted</p>	<p>Subsection B (new), (will be subsection C effective July 1, 2020) - form of orders for administration to certain patients; how such orders transmitted - moved from § 54.1-3408.01(B)</p> <p>Subsection C (new), (will be subsection D effective July 1, 2020) - transmission of oral prescriptions - moved from § 54.1-3408.01(C)</p>

<p>§ 54.1-3410.3 NEW SECTION</p>	<p>Dispensing by persons other than pharmacist.</p>	<p>Subsection A, dispensing of controlled substances by prescribers - moved from § 54.1-3408(A) Subsection B, dispensing of certain drugs and devices when the State Health Commissioner has declared a disaster or state of emergency - moved from § 54.1-3408(P)</p>
<p>§ 54.1-3431.1 NEW SECTION</p>	<p>Dispensing of naloxone or other opioid antagonist; possess and administration of naloxone or other opioid antagonist.</p>	<p>Language taken from subsections X and Y of § 54.1-3408</p>

In addition, there are several sections with cross-references to § 54.1-3408 that will be updated to reflect this reorganization.

To: Virginia Code Commission

Re: Proposed Restructuring of Recounts Article in Title 24.2

Date: August 19, 2019

From: Brooks C. Braun, Attorney, Division of Legislative Services

1 TITLE 24.2.

2 ELECTIONS.

3 CHAPTER 8.

4 RECOUNTS AND CONTESTED ELECTIONS.

5 Article 1.

6 Recounts.

7 **Drafting note: This proposed restructuring of Article 1 (§ 24.2-800 et seq.) of**
8 **Chapter 8 of Title 24.2 is presented with all sections of Article 1 and one section outside of**
9 **Article 1 in which a cross-reference is updated.**

10 **§ 24.2-800. Recounts in all elections.**

11 A. The provisions of this article apply to all elections held in the Commonwealth.

12 B. When there is between any candidate apparently nominated or elected and any
13 candidate apparently defeated a difference of not more than one percent of the total vote cast for
14 the two such candidates as determined by the State Board or the electoral board, the defeated
15 candidate may appeal from the determination of the State Board or the electoral board for a
16 recount of the vote as set forth in this article. When there is between any write-in candidate
17 apparently nominated or elected and any candidate apparently defeated, or between any
18 candidate apparently nominated or elected and any write-in candidate apparently defeated, a
19 difference of not more than five percent of the total vote cast for the two such candidates as
20 determined by the State Board or the electoral board, the defeated candidate may appeal from
21 the determination of the State Board or the electoral board for a recount of the vote as set forth
22 in this article. In an election of electors for the President and Vice President of the United States,

23 the presidential candidate shall represent the vice presidential candidate and slate of electors and
24 be the party to the recount for purposes of this article.

25 C. When there is between the vote for a question and the vote against a question a
26 difference of not more than ~~thirty~~ 50 votes or one percent of the total vote cast for and against the
27 question as determined by the State Board or the electoral board, whichever is greater, ~~thirty~~ 50
28 or more voters qualified to vote on the question, by signing and filing their petition, may appeal
29 from the determination of the State Board or the electoral board for a recount of the vote as set
30 forth in this article.

31 ~~D. The State Board shall promulgate standards and instructions for the conduct of~~
32 ~~simultaneous recounts of two or more elections in a single election district.~~

33 **Drafting note: Subsection D is relocated as proposed subsection B of § 24.2-802.**
34 **Technical changes are made.**

35 **§ 24.2-801. (Effective until July 1, 2020) Petition for recount; recount court.**

36 A. The petition for a recount of an election, other than an election for presidential electors,
37 shall be filed within 10 days from the day the State Board or the electoral board certifies the
38 result of the election under § 24.2-679 or § 24.2-671, but not thereafter. The petition shall be
39 filed in the Circuit Court of the City of Richmond in the case of any statewide office and in the
40 circuit court of the county or city in which the candidate being challenged resides in the case of
41 any other office. The petition shall be filed in the Circuit Court of the City of Richmond in the
42 case of any statewide referendum and in the circuit court of any county or city comprising a part
43 of the election district in the case of any other referendum.

44 B. The petition shall set forth the results certified by the State Board or electoral board
45 and shall request the court to have the ballots in the election recounted or, in the case of direct
46 recording electronic machines, the vote redetermined.

47 C. In an election for office, a copy of the petition shall be served on the candidate
48 apparently nominated or elected as provided under § 8.01-296 and within 10 days after the State
49 Board or electoral board has certified the results of such election. In a referendum, a copy of the

50 petition shall be so served on the governing body or chief executive officer of the jurisdiction in
51 which the election was held.

52 D. The chief judge of the circuit court in which a petition is filed shall promptly notify
53 the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit
54 with the chief judge, and the court shall be constituted and sit in all respects as a court appointed
55 and sitting under §§ 24.2-805 and 24.2-806.

56 E. Commencing upon the filing of the recount, nothing shall prevent the discovery or
57 disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of
58 an election.

59 **Drafting note: Proposed subsection E is derived from subsection B of § 24.2-802.**
60 **Subsection labels are added for easier reference to distinct parts of the section. Technical**
61 **changes are made.**

62 **§ 24.2-801. (Effective July 1, 2020) Petition for recount; recount court.**

63 A. The petition for a recount of an election, other than an election for presidential electors,
64 shall be filed within 10 days from the day the State Board or the electoral board certifies the
65 result of the election under § 24.2-679 or § 24.2-671, but not thereafter. The petition shall be
66 filed in the Circuit Court of the City of Richmond in the case of any statewide office and in the
67 circuit court of the county or city in which the candidate being challenged resides in the case of
68 any other office. The petition shall be filed in the Circuit Court of the City of Richmond in the
69 case of any statewide referendum and in the circuit court of any county or city comprising a part
70 of the election district in the case of any other referendum.

71 B. The petition shall set forth the results certified by the State Board or electoral board
72 and shall request the court to have the ballots in the election recounted.

73 C. In an election for office, a copy of the petition shall be served on the candidate
74 apparently nominated or elected as provided under § 8.01-296 and within 10 days after the State
75 Board or electoral board has certified the results of such election. In a referendum, a copy of the

76 petition shall be so served on the governing body or chief executive officer of the jurisdiction in
77 which the election was held.

78 D. The chief judge of the circuit court in which a petition is filed shall promptly notify
79 the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit
80 with the chief judge, and the court shall be constituted and sit in all respects as a court appointed
81 and sitting under §§ 24.2-805 and 24.2-806.

82 E. Commencing upon the filing of the recount, nothing shall prevent the discovery or
83 disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of
84 an election.

85 **Drafting note: Proposed subsection E is derived from subsection B of § 24.2-802.**
86 **Subsection labels are added for easier reference to distinct parts of the section. Technical**
87 **changes are made.**

88 **§ 24.2-801.1. (Effective until July 1, 2020) Petition for recount of election for**
89 **presidential electors; recount court.**

90 A. The petition for a recount of an election for presidential electors shall be filed no later
91 than 5:00 p.m. on the second calendar day after the day the State Board certifies the result of the
92 election under § 24.2-679, but not thereafter. Presidential candidates who anticipate the
93 possibility of asking for a recount are encouraged to so notify the State Board by letter as soon
94 as possible after election day. The petition shall be filed in the Circuit Court of the City of
95 Richmond. If any presidential candidate is eligible to seek a recount of the results of the election
96 for presidential electors under § 24.2-800 the State Board shall, within 24 hours of the
97 certification of the results, notify the Circuit Court of the City of Richmond and the Supreme
98 Court of Virginia (i) that a recount is possible, (ii) which presidential candidate is eligible to seek
99 a recount, and (iii) of the date the results were certified. The Circuit Court of the City of
100 Richmond shall make arrangements to receive any such filing if the office would normally be
101 closed the entire day, or prior to 5:00 p.m., on the second calendar day after the day the State
102 Board certified the result of the election.

103 B. The petition shall set forth the results certified by the State Board and shall request the
104 court to have the ballots in the election recounted or, in the case of direct recording electronic
105 machines, the vote redetermined.

106 C. A copy of the petition shall be served on the presidential candidate whose electors
107 were apparently elected as provided under § 8.01-296 and within five calendar days after the
108 State Board has certified the results of such election.

109 D. As soon as a petition is filed, the chief judge of the Circuit Court shall promptly notify
110 the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit
111 with the chief judge, and the court shall be constituted and sit in all respects as a court appointed
112 and sitting under § 24.2-805.

113 E. Commencing upon the filing of the recount, nothing shall prevent the discovery or
114 disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of
115 an election.

116 F. Any recount of an election for presidential electors shall be held promptly and
117 completed, in accordance with the provisions of 3 U.S.C. § 5, at least six days before the time
118 fixed for the meeting of the electors.

119 **Drafting note: Proposed subsection E is derived from subsection B of § 24.2-802.**
120 **Subsection labels are added for easier reference to distinct parts of the section. Technical**
121 **changes are made.**

122 **§ 24.2-801.1. (Effective July 1, 2020) Petition for recount of election for presidential**
123 **electors; recount court.**

124 A. The petition for a recount of an election for presidential electors shall be filed no later
125 than 5:00 p.m. on the second calendar day after the day the State Board certifies the result of the
126 election under § 24.2-679, but not thereafter. Presidential candidates who anticipate the
127 possibility of asking for a recount are encouraged to so notify the State Board by letter as soon
128 as possible after election day. The petition shall be filed in the Circuit Court of the City of
129 Richmond. If any presidential candidate is eligible to seek a recount of the results of the election

130 for presidential electors under § 24.2-800 the State Board shall, within 24 hours of the
131 certification of the results, notify the Circuit Court of the City of Richmond and the Supreme
132 Court of Virginia (i) that a recount is possible, (ii) which presidential candidate is eligible to seek
133 a recount, and (iii) of the date the results were certified. The Circuit Court of the City of
134 Richmond shall make arrangements to receive any such filing if the office would normally be
135 closed the entire day, or prior to 5:00 p.m., on the second calendar day after the day the State
136 Board certified the result of the election.

137 B. The petition shall set forth the results certified by the State Board and shall request the
138 court to have the ballots in the election recounted.

139 C. A copy of the petition shall be served on the presidential candidate whose electors
140 were apparently elected as provided under § 8.01-296 and within five calendar days after the
141 State Board has certified the results of such election.

142 D. As soon as a petition is filed, the chief judge of the Circuit Court shall promptly notify
143 the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit
144 with the chief judge, and the court shall be constituted and sit in all respects as a court appointed
145 and sitting under § 24.2-805.

146 E. Commencing upon the filing of the recount, nothing shall prevent the discovery or
147 disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of
148 an election.

149 F. Any recount of an election for presidential electors shall be held promptly and
150 completed, in accordance with the provisions of 3 U.S.C. § 5, at least six days before the time
151 fixed for the meeting of the electors.

152 **Drafting note: Proposed subsection E is derived from subsection B of § 24.2-802.**
153 **Subsection labels are added for easier reference to distinct parts of the section. Technical**
154 **changes are made.**

155 § 24.2-802. (Effective until July 1, 2020) ~~Procedure for recount~~ Recount
156 standards.

157 A. The State Board of Elections shall promulgate standards for (i) the proper handling
158 and security of voting and counting machines, ballots, and other materials required for a recount,
159 (ii) ~~accurate-determination~~ counting of votes based upon objective evidence and taking into
160 account the counting machine and form of ballots approved for use in the Commonwealth, and
161 (iii) any other matters that will promote a timely and accurate resolution of the recount.

162 B. The State Board shall promulgate additional standards and instructions for the conduct
163 of simultaneous recounts of two or more elections in a single election district.

164 C. The chief judge of the circuit court or the full recount court may, consistent with State
165 Board of Elections standards, resolve disputes over the application of the standards and direct all
166 other appropriate measures to ensure the proper conduct of the recount.

167 ~~The recount procedures to be followed throughout the election district shall be as uniform~~
168 ~~as practicable, taking into account the types of ballots and voting and counting machines in use~~
169 ~~in the election district.~~

170 ~~In preparation for the recount, the clerks of the circuit courts shall (a) secure all printed~~
171 ~~ballots and other election materials in sealed boxes; (b) place all of the sealed boxes in a vault or~~
172 ~~room not open to the public or to anyone other than the clerk and his staff; (c) cause such vault~~
173 ~~or room to be securely locked except when access is necessary for the clerk and his staff; and (d)~~
174 ~~certify that these security measures have been taken in whatever form is deemed appropriate by~~
175 ~~the chief judge.~~

176 ~~B. Within seven calendar days of the filing of the petition for a recount of any election~~
177 ~~other than an election for presidential electors, or within five calendar days of the filing of a~~
178 ~~petition for a recount of an election for presidential electors, the chief judge of the circuit court~~
179 ~~shall call a preliminary hearing at which (i) motions may be disposed of and (ii) the rules of~~
180 ~~procedure may be fixed, both subject to review by the full court. As part of the preliminary~~
181 ~~hearing, the chief judge may permit the petitioner and his counsel, together with each other party~~
182 ~~and his counsel and at least two members of the electoral board and the custodians, to examine~~
183 ~~any direct recording electronic machine of the type that prints returns when the print-out sheets~~

184 are not clearly legible. The petitioner and his counsel and each other party and their counsel
185 under supervision of the electoral board and its agents shall also have access to pollbooks and
186 other materials used in the election for examination purposes, provided that individual ballots
187 cast in the election shall not be examined at the preliminary hearing. The chief judge during the
188 preliminary hearing shall review all security measures taken for all ballots and voting and
189 counting machines and direct, as he deems necessary, all appropriate measures to ensure proper
190 security to conduct the recount.

191 The chief judge, subject to review by the full court, may set the place or places for the
192 recount and may order the delivery of election materials to a central location and the
193 transportation of voting and counting machines to a central location in each county or city under
194 appropriate safeguards.

195 After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing at
196 which all motions shall be disposed of and the rules of procedure shall be fixed finally, and it
197 shall issue a written order setting out such rules of procedure. The court shall call for the advice
198 and cooperation of the Department, the State Board, or any local electoral board, as appropriate,
199 and such boards or agency shall have the duty and authority to assist the court. The court shall
200 fix procedures that shall provide for the accurate determination of votes in the election.

201 The determination of the votes in a recount shall be based on votes cast in the election
202 and shall not take into account (a) any absentee ballots or provisional ballots sought to be cast
203 but ruled invalid and not cast in the election, (b) ballots cast only for administrative or test
204 purposes and voided by the officers of election, or (c) ballots spoiled by a voter and replaced
205 with a new ballot.

206 The eligibility of any voter to have voted shall not be an issue in a recount. Commencing
207 upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence
208 that could be used pursuant to § 24.2-803 in contesting the results of an election.

209 C. The court shall permit each candidate, or petitioner and governing body or chief
210 executive officer, to select an equal number of the officers of election to be recount officials and

211 to count printed ballots, or in the case of direct recording electronic machines, to redetermine the
212 vote. The number shall be fixed by the court and be sufficient to conduct the recount within a
213 reasonable period. The court may permit each party to the recount to submit a list of alternate
214 officials in the number the court directs. There shall be at least one team of recount officials to
215 recount printed ballots and to redetermine the vote cast on direct recording electronic machines
216 of the type that prints returns for the election district at large in which the recount is being held.
217 There shall be at least one team from each locality using ballot scanner machines to insert the
218 ballots into one or more scanners. The ballot scanner machines shall be programmed to count
219 only votes cast for parties to the recount or for or against the question in a referendum recount.
220 Each team shall be composed of one representative of each party.

221 The court may provide that if, at the time of the recount, any recount official fails to
222 appear, the remaining recount officials present shall appoint substitute recount officials who shall
223 possess the same qualifications as the recount officials for whom they substitute. The court may
224 select pairs of recount coordinators to serve for each county or city in the election district who
225 shall be members of the county or city electoral board and represent different political parties.
226 The court shall have authority to summon such officials and coordinators. On the request of any
227 party to the recount, the court shall allow that party to appoint one representative observer for
228 each team of recount officials. The representative observers shall have an unobstructed view of
229 the work of the recount officials. The expenses of its representatives shall be borne by each party.

230 D. The court (i) shall supervise the recount and (ii) may require delivery of any or all
231 pollbooks used and any or all ballots cast at the election, or may assume supervision thereof
232 through the recount coordinators and officials.

233 The redetermination of the vote in a recount shall be conducted as follows:

234 1. For paper ballots, the recount officials shall hand count the paper ballots using the
235 standards promulgated by the State Board pursuant to subsection A.

236 2. For direct recording electronic machines (DREs), the recount officials shall open the
237 envelopes with the printouts and read the results from the printouts. If the printout is not clear,

238 ~~or on the request of the court, the recount officials shall rerun the printout from the machine or~~
239 ~~examine the counters as appropriate.~~

240 ~~3. For ballot scanner machines, the recount officials shall rerun all the machine-readable~~
241 ~~ballots through a scanner programmed to count only the votes for the office or issue in question~~
242 ~~in the recount and to set aside all ballots containing write-in votes, overvotes, and undervotes.~~
243 ~~The ballots that are set aside, any ballots not accepted by the scanner, and any ballots for which~~
244 ~~a scanner could not be programmed to meet the programming requirements of this subdivision,~~
245 ~~shall be hand counted using the standards promulgated by the State Board pursuant to subsection~~
246 ~~A. If the total number of machine-readable ballots reported as counted by the scanner plus the~~
247 ~~total number of ballots set aside by the scanner do not equal the total number of ballots rerun~~
248 ~~through the scanner, then all ballots cast on ballot scanner machines for that precinct shall be set~~
249 ~~aside to be counted by hand using the standards promulgated by the State Board pursuant to~~
250 ~~subsection A. Prior to running the machine-readable ballots through the ballot scanner machine,~~
251 ~~the recount officials shall ensure that logic and accuracy tests have been successfully performed~~
252 ~~on each scanner after the scanner has been programmed. The result calculated for ballots~~
253 ~~accepted by the ballot scanner machine during the recount shall be considered the correct~~
254 ~~determination for those machine-readable ballots unless the court finds sufficient cause to rule~~
255 ~~otherwise.~~

256 ~~There shall be only one redetermination of the vote in each precinct.~~

257 ~~At the conclusion of the recount of each precinct, the recount officials shall write down~~
258 ~~the number of valid ballots cast, this number being obtained from the ballots cast in the precinct,~~
259 ~~or from the ballots cast as shown on the statement of results if the ballots cannot be found, for~~
260 ~~each of the two candidates or for and against the question. They shall submit the ballots or the~~
261 ~~statement of results used, as to the validity of which questions exist, to the court. The written~~
262 ~~statement of any one recount official challenging a ballot shall be sufficient to require its~~
263 ~~submission to the court. If, on all direct recording electronic machines, the number of persons~~
264 ~~voting in the election, or the number of votes cast for the office or on the question, totals more~~

265 than the number of names on the pollbooks of persons voting on the voting machines, the figures
266 recorded by the machines shall be accepted as correct.

267 ~~At the conclusion of the recount of all precincts, after allowing the parties to inspect the~~
268 ~~questioned ballots, and after hearing arguments, the court shall rule on the validity of all~~
269 ~~questioned ballots and votes. After determining all matters pertaining to the recount and~~
270 ~~redetermination of the vote as raised by the parties, the court shall certify to the State Board and~~
271 ~~the electoral board or boards (a) the vote for each party to the recount and declare the person~~
272 ~~who received the higher number of votes to be nominated or elected, as appropriate, or (b) the~~
273 ~~votes for and against the question and declare the outcome of the referendum. The Department~~
274 ~~shall post on the Internet any and all changes made during the recount to the results as previously~~
275 ~~certified by it pursuant to § 24.2-679.~~

276 ~~E. Costs of the recount shall be assessed against the counties and cities comprising the~~
277 ~~election district when (i) the candidate petitioning for the recount is declared the winner; (ii) the~~
278 ~~petitioners in a recount of a referendum win the recount; or (iii) there was between the candidate~~
279 ~~apparently nominated or elected and the candidate petitioning for the recount a difference of not~~
280 ~~more than one-half of one percent of the total vote cast for the two such candidates as determined~~
281 ~~by the State Board or electoral board prior to the recount. Otherwise the costs of the recount shall~~
282 ~~be assessed against the candidate petitioning for the recount or the petitioners in a recount of a~~
283 ~~referendum. If more than one candidate petitions for a recount, the court may assess costs in an~~
284 ~~equitable manner between the counties and cities and any such candidate if both are liable for~~
285 ~~costs under this subsection. Costs incurred to date shall be assessed against any candidate or~~
286 ~~petitioner who defaults or withdraws his petition.~~

287 ~~F. The court shall determine the costs of the recount subject to the following limitations:~~
288 ~~(i) no per diem payment shall be assessed for salaried election officials; (ii) no per diem payment~~
289 ~~to officers of election serving as recount officials shall exceed two-thirds of the per diem paid~~
290 ~~such officers by the county or city for service on election day; and (iii) per diem payments to~~
291 ~~alternates shall be allowed only if they serve.~~

292 ~~G. Any petitioner who may be assessed with costs under subsection E shall post a bond~~
293 ~~with surety with the court in the amount of \$10 per precinct in the area subject to recount. If the~~
294 ~~petitioner wins the recount, the bond shall not be forfeit. If the petitioner loses the recount, the~~
295 ~~bond shall be forfeit only to the extent of the assessed costs. If the assessed costs exceed the~~
296 ~~bond, he shall be liable for such excess.~~

297 ~~H. The recount proceeding shall be final and not subject to appeal.~~

298 ~~I. For the purposes of this section:~~

299 ~~"Overvote" means a ballot on which a voter casts a vote for a greater number of~~
300 ~~candidates or positions than the number for which he was lawfully entitled to vote and no vote~~
301 ~~shall be counted with respect to that office or issue.~~

302 ~~"Undervote" means a ballot on which a voter casts a vote for a lesser number of~~
303 ~~candidates or positions than the number for which he was lawfully entitled to vote.~~

304 **Drafting note: The catchline is amended to reflect the revised content of the section**
305 **as proposed. Subsection A is amended to reduce possible confusion regarding the multiple**
306 **senses of the words "redetermination" and "recount" currently used in this chapter.**
307 **Proposed subsection B is derived from § 24.2-800. The first stricken paragraph in existing**
308 **subsection A is relocated to proposed subsection B of § 24.2-802.1. The second stricken**
309 **paragraph in existing subsection A is removed from the article because the procedures**
310 **unnecessarily duplicate those already set out in subsection A of § 24.2-668 and subsection**
311 **D of § 24.2-802. Existing subsections B and C and the first paragraph of existing subsection**
312 **D are relocated to proposed § 24.2-802.1; however, The fourth paragraph of existing**
313 **subsection B is relocated to proposed subsection B of § 24.2-802.2, the first sentence of the**
314 **fifth paragraph of existing subsection B is relocated to proposed subsection C of § 24.2-**
315 **802.2, and the second sentence of the fifth paragraph of existing subsection B is relocated**
316 **to subsection E of §§ 24.2-801 and 24.2-801.1. The remainder of existing subsection D is**
317 **relocated to proposed subsections D, E, and F of § 24.2-802.2. Subsections E, F, and G are**

318 **relocated to proposed § 24.2-802.3. Subsections H and I are relocated to § 24.2-802.2 as**
319 **proposed subsections G and A, respectively. Technical changes are made.**

320 **§ 24.2-802. (Effective July 1, 2020)-~~Procedure for recount~~ Recount standards.**

321 A. The State Board of Elections shall promulgate standards for (i) the proper handling
322 and security of voting systems, ballots, and other materials required for a recount, (ii) accurate
323 ~~determination~~ counting of votes based upon objective evidence and taking into account the
324 voting system and form of ballots approved for use in the Commonwealth, and (iii) any other
325 matters that will promote a timely and accurate resolution of the recount.

326 B. The State Board shall promulgate additional standards and instructions for the conduct
327 of simultaneous recounts of two or more elections in a single election district.

328 C. The chief judge of the circuit court or the full recount court may, consistent with State
329 Board of Elections standards, resolve disputes over the application of the standards and direct all
330 other appropriate measures to ensure the proper conduct of the recount.

331 ~~The recount procedures to be followed throughout the election district shall be as uniform~~
332 ~~as practicable, taking into account the types of ballots and voting systems in use in the election~~
333 ~~district.~~

334 ~~In preparation for the recount, the clerks of the circuit courts shall (a) secure all printed~~
335 ~~ballots and other election materials in sealed boxes; (b) place all of the sealed boxes in a vault or~~
336 ~~room not open to the public or to anyone other than the clerk and his staff; (c) cause such vault~~
337 ~~or room to be securely locked except when access is necessary for the clerk and his staff; and (d)~~
338 ~~certify that these security measures have been taken in whatever form is deemed appropriate by~~
339 ~~the chief judge.~~

340 ~~B. Within seven calendar days of the filing of the petition for a recount of any election~~
341 ~~other than an election for presidential electors, or within five calendar days of the filing of a~~
342 ~~petition for a recount of an election for presidential electors, the chief judge of the circuit court~~
343 ~~shall call a preliminary hearing at which (i) motions may be disposed of and (ii) the rules of~~
344 ~~procedure may be fixed, both subject to review by the full court. The petitioner and his counsel~~

345 ~~and each other party and their counsel under supervision of the electoral board and its agents~~
346 ~~shall have access to pollbooks and other materials used in the election for examination purposes,~~
347 ~~provided that individual ballots cast in the election shall not be examined at the preliminary~~
348 ~~hearing. The chief judge during the preliminary hearing shall review all security measures taken~~
349 ~~for all ballots and voting systems and direct, as he deems necessary, all appropriate measures to~~
350 ~~ensure proper security to conduct the recount.~~

351 ~~The chief judge, subject to review by the full court, may set the place or places for the~~
352 ~~recount and may order the delivery of election materials to a central location and the~~
353 ~~transportation of voting systems to a central location in each county or city under appropriate~~
354 ~~safeguards.~~

355 ~~After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing at~~
356 ~~which all motions shall be disposed of and the rules of procedure shall be fixed finally, and it~~
357 ~~shall issue a written order setting out such rules of procedure. The court shall call for the advice~~
358 ~~and cooperation of the Department, the State Board, or any local electoral board, as appropriate,~~
359 ~~and such boards or agency shall have the duty and authority to assist the court. The court shall~~
360 ~~fix procedures that shall provide for the accurate determination of votes in the election.~~

361 ~~The determination of the votes in a recount shall be based on votes cast in the election~~
362 ~~and shall not take into account (a) any absentee ballots or provisional ballots sought to be cast~~
363 ~~but ruled invalid and not cast in the election, (b) ballots cast only for administrative or test~~
364 ~~purposes and voided by the officers of election, or (c) ballots spoiled by a voter and replaced~~
365 ~~with a new ballot.~~

366 ~~The eligibility of any voter to have voted shall not be an issue in a recount. Commencing~~
367 ~~upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence~~
368 ~~that could be used pursuant to § 24.2-803 in contesting the results of an election.~~

369 ~~C. The court shall permit each candidate, or petitioner and governing body or chief~~
370 ~~executive officer, to select an equal number of the officers of election to be recount officials and~~
371 ~~to count printed ballots. The number shall be fixed by the court and be sufficient to conduct the~~

372 ~~recount within a reasonable period. The court may permit each party to the recount to submit a~~
373 ~~list of alternate officials in the number the court directs. There shall be at least one team from~~
374 ~~each locality using ballot scanner machines to insert the ballots into one or more scanners. The~~
375 ~~ballot scanner machines shall be programmed to count only votes cast for parties to the recount~~
376 ~~or for or against the question in a referendum recount. Each team shall be composed of one~~
377 ~~representative of each party.~~

378 ~~The court may provide that if, at the time of the recount, any recount official fails to~~
379 ~~appear, the remaining recount officials present shall appoint substitute recount officials who shall~~
380 ~~possess the same qualifications as the recount officials for whom they substitute. The court may~~
381 ~~select pairs of recount coordinators to serve for each county or city in the election district who~~
382 ~~shall be members of the county or city electoral board and represent different political parties.~~
383 ~~The court shall have authority to summon such officials and coordinators. On the request of any~~
384 ~~party to the recount, the court shall allow that party to appoint one representative observer for~~
385 ~~each team of recount officials. The representative observers shall have an unobstructed view of~~
386 ~~the work of the recount officials. The expenses of its representatives shall be borne by each party.~~

387 ~~D. The court (i) shall supervise the recount and (ii) may require delivery of any or all~~
388 ~~pollbooks used and any or all ballots cast at the election, or may assume supervision thereof~~
389 ~~through the recount coordinators and officials.~~

390 ~~The redetermination of the vote in a recount shall be conducted as follows:~~

391 ~~1. For paper ballots, the recount officials shall hand count the paper ballots using the~~
392 ~~standards promulgated by the State Board pursuant to subsection A.~~

393 ~~2. For ballot scanner machines, the recount officials shall rerun all the machine-readable~~
394 ~~ballots through a scanner programmed to count only the votes for the office or issue in question~~
395 ~~in the recount and to set aside all ballots containing write-in votes, overvotes, and undervotes.~~
396 ~~The ballots that are set aside, any ballots not accepted by the scanner, and any ballots for which~~
397 ~~a scanner could not be programmed to meet the programming requirements of this subdivision,~~
398 ~~shall be hand counted using the standards promulgated by the State Board pursuant to subsection~~

399 ~~A. If the total number of machine-readable ballots reported as counted by the scanner plus the~~
400 ~~total number of ballots set aside by the scanner do not equal the total number of ballots rerun~~
401 ~~through the scanner, then all ballots cast on ballot scanner machines for that precinct shall be set~~
402 ~~aside to be counted by hand using the standards promulgated by the State Board pursuant to~~
403 ~~subsection A. Prior to running the machine-readable ballots through the ballot scanner machine,~~
404 ~~the recount officials shall ensure that logic and accuracy tests have been successfully performed~~
405 ~~on each scanner after the scanner has been programmed. The result calculated for ballots~~
406 ~~accepted by the ballot scanner machine during the recount shall be considered the correct~~
407 ~~determination for those machine-readable ballots unless the court finds sufficient cause to rule~~
408 ~~otherwise.~~

409 ~~There shall be only one redetermination of the vote in each precinct.~~

410 ~~At the conclusion of the recount of each precinct, the recount officials shall write down~~
411 ~~the number of valid ballots cast, this number being obtained from the ballots cast in the precinct,~~
412 ~~or from the ballots cast as shown on the statement of results if the ballots cannot be found, for~~
413 ~~each of the two candidates or for and against the question. They shall submit the ballots or the~~
414 ~~statement of results used, as to the validity of which questions exist, to the court. The written~~
415 ~~statement of any one recount official challenging a ballot shall be sufficient to require its~~
416 ~~submission to the court. If, on all ballot scanners, the number of persons voting in the election,~~
417 ~~or the number of votes cast for the office or on the question, totals more than the number of~~
418 ~~names on the pollbooks of persons voting on the voting machines, the figures recorded by the~~
419 ~~machines shall be accepted as correct.~~

420 ~~At the conclusion of the recount of all precincts, after allowing the parties to inspect the~~
421 ~~questioned ballots, and after hearing arguments, the court shall rule on the validity of all~~
422 ~~questioned ballots and votes. After determining all matters pertaining to the recount and~~
423 ~~redetermination of the vote as raised by the parties, the court shall certify to the State Board and~~
424 ~~the electoral board or boards (a) the vote for each party to the recount and declare the person~~
425 ~~who received the higher number of votes to be nominated or elected, as appropriate, or (b) the~~

426 ~~votes for and against the question and declare the outcome of the referendum. The Department~~
427 ~~shall post on the Internet any and all changes made during the recount to the results as previously~~
428 ~~certified by it pursuant to § 24.2-679.~~

429 ~~E. Costs of the recount shall be assessed against the counties and cities comprising the~~
430 ~~election district when (i) the candidate petitioning for the recount is declared the winner; (ii) the~~
431 ~~petitioners in a recount of a referendum win the recount; or (iii) there was between the candidate~~
432 ~~apparently nominated or elected and the candidate petitioning for the recount a difference of not~~
433 ~~more than one-half of one percent of the total vote cast for the two such candidates as determined~~
434 ~~by the State Board or electoral board prior to the recount. Otherwise the costs of the recount shall~~
435 ~~be assessed against the candidate petitioning for the recount or the petitioners in a recount of a~~
436 ~~referendum. If more than one candidate petitions for a recount, the court may assess costs in an~~
437 ~~equitable manner between the counties and cities and any such candidate if both are liable for~~
438 ~~costs under this subsection. Costs incurred to date shall be assessed against any candidate or~~
439 ~~petitioner who defaults or withdraws his petition.~~

440 ~~F. The court shall determine the costs of the recount subject to the following limitations:~~
441 ~~(i) no per diem payment shall be assessed for salaried election officials; (ii) no per diem payment~~
442 ~~to officers of election serving as recount officials shall exceed two-thirds of the per diem paid~~
443 ~~such officers by the county or city for service on election day; and (iii) per diem payments to~~
444 ~~alternates shall be allowed only if they serve.~~

445 ~~G. Any petitioner who may be assessed with costs under subsection E shall post a bond~~
446 ~~with surety with the court in the amount of \$10 per precinct in the area subject to recount. If the~~
447 ~~petitioner wins the recount, the bond shall not be forfeit. If the petitioner loses the recount, the~~
448 ~~bond shall be forfeit only to the extent of the assessed costs. If the assessed costs exceed the~~
449 ~~bond, he shall be liable for such excess.~~

450 ~~H. The recount proceeding shall be final and not subject to appeal.~~

451 ~~I. For the purposes of this section:~~

452 ~~"Overvote" means a ballot on which a voter casts a vote for a greater number of~~
453 ~~candidates or positions than the number for which he was lawfully entitled to vote and no vote~~
454 ~~shall be counted with respect to that office or issue.~~

455 ~~"Undervote" means a ballot on which a voter casts a vote for a lesser number of~~
456 ~~candidates or positions than the number for which he was lawfully entitled to vote.~~

457 **Drafting note: The catchline is amended to reflect the revised content of the section**
458 **as proposed. Subsection A is amended to reduce possible confusion regarding the multiple**
459 **senses of the words "redetermination" and "recount" currently used in this chapter.**
460 **Proposed subsection B is derived from § 24.2-800. The first stricken paragraph in existing**
461 **subsection A is relocated to proposed subsection B of § 24.2-802.1. The second stricken**
462 **paragraph in existing subsection A is removed from the article because the procedures**
463 **unnecessarily duplicate those already set out in subsection A of § 24.2-668 and subsection**
464 **D of § 24.2-802. Existing subsections B and C and the first paragraph of existing subsection**
465 **D are relocated to proposed § 24.2-802.1; however, The fourth paragraph of existing**
466 **subsection B is relocated to proposed subsection B of § 24.2-802.2, the first sentence of the**
467 **fifth paragraph of existing subsection B is relocated to proposed subsection C of § 24.2-**
468 **802.2, and the second sentence of the fifth paragraph of existing subsection B is relocated**
469 **to subsection E of §§ 24.2-801 and 24.2-801.1. The remainder of existing subsection D is**
470 **relocated to proposed subsections D, E, and F of § 24.2-802.2. Subsections E, F, and G are**
471 **relocated to proposed § 24.2-802.3. Subsections H and I are relocated to § 24.2-802.2 as**
472 **proposed subsections G and A, respectively. Technical changes are made.**

473 **§ 24.2-802.1. (Effective until July 1, 2020) Recount court proceedings.**

474 ~~B. A.~~ Within seven calendar days of the filing of the petition for a recount of any election
475 other than an election for presidential electors, or within five calendar days of the filing of a
476 petition for a recount of an election for presidential electors, the chief judge of the circuit court
477 shall call a preliminary hearing at which (i) motions may be disposed of and (ii) the rules of
478 procedure may be fixed, both subject to review by the full court. As part of the preliminary

479 hearing, the chief judge may permit the petitioner and his counsel, together with each other party
480 and his counsel and at least two members of the electoral board and the custodians, to examine
481 any direct recording electronic machine of the type that prints returns when the print-out sheets
482 are not clearly legible. The petitioner and his counsel and each other party and their counsel
483 under supervision of the electoral board and its agents shall also have access to pollbooks and
484 other materials used in the election for examination purposes, provided that individual ballots
485 cast in the election shall not be examined at the preliminary hearing. The chief judge during the
486 preliminary hearing shall review all security measures taken for all ballots and voting and
487 counting machines and direct, as he deems necessary, all appropriate measures to ensure proper
488 security to conduct the recount.

489 The chief judge, subject to review by the full court, may set the place ~~or places~~ for the
490 recount and may order the delivery of election materials to a central location and the
491 transportation of voting and counting machines to a central location in each county or city under
492 appropriate safeguards.

493 B. After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing
494 at which all motions shall be disposed of and the rules of procedure shall be fixed finally, and it
495 shall issue a written order setting out such rules of procedure. The court shall call for the advice
496 and cooperation of the Department, the State Board, or any local electoral board, as appropriate,
497 and such boards or agency shall have the duty and authority to assist the court. The court shall
498 fix procedures that shall provide for the accurate ~~determination~~ counting of votes in the election.
499 The recount procedures to be followed throughout the election district shall be as uniform as
500 practicable, taking into account the types of ballots and voting and counting machines in use in
501 the election district.

502 ~~The determination of the votes in a recount shall be based on votes cast in the election~~
503 ~~and shall not take into account (a) any absentee ballots or provisional ballots sought to be cast~~
504 ~~but ruled invalid and not cast in the election, (b) ballots cast only for administrative or test~~

505 ~~purposes and voided by the officers of election, or (c) ballots spoiled by a voter and replaced~~
506 ~~with a new ballot.~~

507 ~~The eligibility of any voter to have voted shall not be an issue in a recount. Commencing~~
508 ~~upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence~~
509 ~~that could be used pursuant to § 24.2-803 in contesting the results of an election.~~

510 C. The court shall permit each candidate, or petitioner and governing body or chief
511 executive officer, to select an equal number of the officers of election to be recount officials and
512 to count printed ballots, or in the case of direct recording electronic machines, to redetermine the
513 vote. The number shall be fixed by the court and be sufficient to conduct the recount within a
514 reasonable period. The court may permit each party to the recount to submit a list of alternate
515 officials in the number the court directs. There shall be at least one team of recount officials to
516 recount printed ballots and to redetermine the vote cast on direct recording electronic machines
517 of the type that prints returns for the election district at large in which the recount is being held.
518 There shall be at least one team from each locality using ballot scanner machines to insert the
519 ballots into one or more scanners. ~~The ballot scanner machines shall be programmed to count~~
520 ~~only votes cast for parties to the recount or for or against the question in a referendum recount.~~
521 Each team shall be composed of one representative of each party.

522 The court may provide that if, at the time of the recount, any recount official fails to
523 appear, the remaining recount officials present shall appoint substitute recount officials who shall
524 possess the same qualifications as the recount officials for whom they substitute. The court may
525 select pairs of recount coordinators to serve for each county or city in the election district who
526 shall be members of the county or city electoral board and represent different political parties.
527 The court shall have authority to summon such officials and coordinators. On the request of any
528 party to the recount, the court shall allow that party to appoint one representative observer for
529 each team of recount officials. The representative observers shall have an unobstructed view of
530 the work of the recount officials. The expenses of its representatives shall be borne by each party.

531 D. The court (i) shall supervise the recount and (ii) may require delivery of any or all
532 pollbooks used and any or all ballots cast at the election, or may assume supervision thereof
533 through the recount coordinators and officials.

534 **Drafting note: Proposed subsections A and B are derived from subsection B of §**
535 **24.2-802. Subsection B is amended to reduce possible confusion regarding the multiple**
536 **senses of the words "redetermination" and "recount" currently used in this chapter.**
537 **Additional new language in proposed subsection B is derived from the first stricken**
538 **paragraph in subsection A of § 24.2-802. The first stricken paragraph of proposed**
539 **subsection B is relocated to subsection B of proposed § 24.2-802.2. The first sentence of the**
540 **second stricken paragraph of proposed subsection B is relocated to subsection C of**
541 **proposed § 24.2-802.2. The second sentence of the second stricken paragraph of proposed**
542 **subsection B is relocated to proposed subsection E of § 24.2-801 and proposed subsection**
543 **E of 24.2-801.1. Proposed subsection C is derived from subsection C of § 24.2-802. The**
544 **stricken language in subsection C is removed from the article because it unnecessarily**
545 **duplicates the language in proposed subdivision D 3 of § 24.2-802.2. Proposed subsection**
546 **D is derived from the first paragraph of subsection D of § 24.2-802. Technical changes are**
547 **made.**

548 **§ 24.2-802.1. (Effective July 1, 2020) Recount court proceedings.**

549 ~~B.~~A. Within seven calendar days of the filing of the petition for a recount of any election
550 other than an election for presidential electors, or within five calendar days of the filing of a
551 petition for a recount of an election for presidential electors, the chief judge of the circuit court
552 shall call a preliminary hearing at which (i) motions may be disposed of and (ii) the rules of
553 procedure may be fixed, both subject to review by the full court. The petitioner and his counsel
554 and each other party and their counsel under supervision of the electoral board and its agents
555 shall have access to pollbooks and other materials used in the election for examination purposes,
556 provided that individual ballots cast in the election shall not be examined at the preliminary
557 hearing. The chief judge during the preliminary hearing shall review all security measures taken

558 for all ballots and voting systems and direct, as he deems necessary, all appropriate measures to
559 ensure proper security to conduct the recount.

560 The chief judge, subject to review by the full court, may set the place ~~or places~~ for the
561 recount and may order the delivery of election materials to a central location and the
562 transportation of voting systems to a central location in each county or city under appropriate
563 safeguards.

564 B. After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing
565 at which all motions shall be disposed of and the rules of procedure shall be fixed finally, and it
566 shall issue a written order setting out such rules of procedure. The court shall call for the advice
567 and cooperation of the Department, the State Board, or any local electoral board, as appropriate,
568 and such boards or agency shall have the duty and authority to assist the court. The court shall
569 fix procedures that shall provide for the accurate ~~determination~~ counting of votes in the election.
570 The recount procedures to be followed throughout the election district shall be as uniform as
571 practicable, taking into account the types of ballots and voting systems in use in the election
572 district.

573 ~~The determination of the votes in a recount shall be based on votes cast in the election~~
574 ~~and shall not take into account (a) any absentee ballots or provisional ballots sought to be cast~~
575 ~~but ruled invalid and not cast in the election, (b) ballots cast only for administrative or test~~
576 ~~purposes and voided by the officers of election, or (c) ballots spoiled by a voter and replaced~~
577 ~~with a new ballot.~~

578 ~~The eligibility of any voter to have voted shall not be an issue in a recount. Commencing~~
579 ~~upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence~~
580 ~~that could be used pursuant to § 24.2-803 in contesting the results of an election.~~

581 C. The court shall permit each candidate, or petitioner and governing body or chief
582 executive officer, to select an equal number of the officers of election to be recount officials and
583 to count printed ballots. The number shall be fixed by the court and be sufficient to conduct the
584 recount within a reasonable period. The court may permit each party to the recount to submit a

585 list of alternate officials in the number the court directs. There shall be at least one team from
586 each locality using ballot scanner machines to insert the ballots into one or more scanners. ~~The~~
587 ~~ballot scanner machines shall be programmed to count only votes cast for parties to the recount~~
588 ~~or for or against the question in a referendum recount.~~ Each team shall be composed of one
589 representative of each party.

590 The court may provide that if, at the time of the recount, any recount official fails to
591 appear, the remaining recount officials present shall appoint substitute recount officials who shall
592 possess the same qualifications as the recount officials for whom they substitute. The court may
593 select pairs of recount coordinators to serve for each county or city in the election district who
594 shall be members of the county or city electoral board and represent different political parties.
595 The court shall have authority to summon such officials and coordinators. On the request of any
596 party to the recount, the court shall allow that party to appoint one representative observer for
597 each team of recount officials. The representative observers shall have an unobstructed view of
598 the work of the recount officials. The expenses of its representatives shall be borne by each party.

599 D. The court (i) shall supervise the recount and (ii) may require delivery of any or all
600 pollbooks used and any or all ballots cast at the election, or may assume supervision thereof
601 through the recount coordinators and officials.

602 **Drafting note: Proposed subsections A and B are derived from subsection B of §**
603 **24.2-802. Subsection B is amended to reduce possible confusion regarding the multiple**
604 **senses of the words "redetermination" and "recount" currently used in this chapter.**
605 **Additional new language in proposed subsection B is derived from the first stricken**
606 **paragraph in subsection A of § 24.2-802. The first stricken paragraph of proposed**
607 **subsection B is relocated to subsection B of proposed § 24.2-802.2. The first sentence of the**
608 **second stricken paragraph of proposed subsection B is relocated to subsection C of**
609 **proposed § 24.2-802.2. The second sentence of the second stricken paragraph of proposed**
610 **subsection B is relocated to proposed subsection E of § 24.2-801 and proposed subsection**
611 **E of 24.2-801.1. Proposed subsection C is derived from subsection C of § 24.2-802. The**

612 **stricken language in subsection C is removed from the article because it unnecessarily**
613 **duplicates the language in proposed subdivision D 2 of § 24.2-802.2. Proposed subsection**
614 **D is derived from the first paragraph of subsection D of § 24.2-802. Technical changes are**
615 **made.**

616 **§ 24.2-802.2. (Effective until July 1, 2020) General recount procedures.**

617 ~~I.~~A. For the purposes of this section:

618 "Overvote" means a ballot on which a voter casts a vote for a greater number of
619 candidates or positions than the number for which he was lawfully entitled to vote and no vote
620 shall be counted with respect to that office or issue.

621 "Undervote" means a ballot on which a voter casts a vote for a lesser number of
622 candidates or positions than the number for which he was lawfully entitled to vote.

623 B. ~~The determination~~ recount of the votes ~~in a recount~~ shall be based on votes cast in the
624 election and shall not take into account ~~(a)~~ (i) any absentee ballots or provisional ballots sought
625 to be cast but ruled invalid and not cast in the election, ~~(b)~~ (ii) ballots cast only for administrative
626 or test purposes and voided by the officers of election, or ~~(c)~~ (iii) ballots spoiled by a voter and
627 replaced with a new ballot.

628 C. The eligibility of any voter to have voted shall not be an issue in a recount.

629 D. There shall be only one recount of the vote in each precinct. ~~The redetermination~~
630 recount of the vote ~~in a recount~~ shall be conducted as follows:

631 1. For paper ballots, the recount officials shall hand count the paper ballots using the
632 standards promulgated by the State Board pursuant to ~~subsection A~~ § 24.2-802.

633 2. For direct recording electronic machines (DREs), the recount officials shall open the
634 envelopes with the printouts and read the results from the printouts. If the printout is not clear,
635 or on the request of the court, the recount officials shall rerun the printout from the machine or
636 examine the counters as appropriate.

637 3. For ballot scanner machines, the recount officials shall rerun all the machine-readable
638 ballots through a scanner programmed to count only the votes for the ~~office~~ parties to or issue in

639 question in the recount and to set aside all ballots containing write-in votes, overvotes, and
640 undervotes. The ballots that are set aside, any ballots not accepted by the scanner, and any ballots
641 for which a scanner could not be programmed to meet the programming requirements of this
642 subdivision, shall be hand counted using the standards promulgated by the State Board pursuant
643 to ~~subsection A, § 24.2-802~~. If the total number of machine-readable ballots reported as counted
644 by the scanner plus the total number of ballots set aside by the scanner do not equal the total
645 number of ballots rerun through the scanner, then all ballots cast on ballot scanner machines for
646 that precinct shall be set aside to be counted by hand using the standards promulgated by the
647 State Board pursuant to ~~subsection A, § 24.2-802~~. Prior to running the machine-readable ballots
648 through the ballot scanner machine, the recount officials shall ensure that logic and accuracy
649 tests have been successfully performed on each scanner after the scanner has been programmed.
650 The result calculated for ballots accepted by the ballot scanner machine during the recount shall
651 be considered ~~the correct determination~~ for those machine-readable ballots unless the court finds
652 sufficient cause to rule otherwise.

653 ~~There shall be only one redetermination of the vote in each precinct.~~

654 E. At the conclusion of the recount of each precinct, the recount officials shall write down
655 the number of valid ballots cast, this number being obtained from the ballots cast in the precinct,
656 or from the ballots cast as shown on the statement of results if the ballots cannot be found, for
657 each of the two candidates or for and against the question. They shall submit the ballots or the
658 statement of results used, as to the validity of which questions exist, to the court. The written
659 statement of any one recount official challenging a ballot shall be sufficient to require its
660 submission to the court. If, on all direct recording electronic machines, the number of persons
661 voting in the election, or the number of votes cast for the office or on the question, totals more
662 than the number of names on the pollbooks of persons voting on the voting machines, the figures
663 recorded by the machines shall be accepted as correct.

664 F. At the conclusion of the recount of all precincts, after allowing the parties to inspect
665 the questioned ballots, and after hearing arguments, the court shall rule on the validity of all

666 questioned ballots and votes. After ~~determining~~ settling all matters pertaining to the recount ~~and~~
667 ~~redetermination~~ of the vote as raised by the parties, the court shall certify to the State Board and
668 the electoral board ~~or boards~~ ~~(a)~~ (i) the vote for each party to the recount and declare the person
669 who received the higher number of votes to be nominated or elected, as appropriate, or ~~(b)~~ (ii)
670 the votes for and against the question and declare the outcome of the referendum. The
671 Department shall post on the Internet any and all changes made during the recount to the results
672 as previously certified by it pursuant to § 24.2-679.

673 H. G. The recount proceeding shall be final and not subject to appeal.

674 **Drafting note: Proposed subsection A is derived from subsection I of § 24.2-802.**
675 **Proposed subsections B and C are derived from the fourth paragraph and first sentence of**
676 **the fifth paragraph of subsection B of § 24.2-802. Proposed subsections D, E, and F are**
677 **derived from subsection D of § 24.2-802, excluding the first paragraph of that existing**
678 **subsection. The line "There shall be only one recount of the vote in each precinct" is moved**
679 **from the middle of the existing subsection to the beginning of proposed subsection D. The**
680 **first sentence of proposed subsection B and the opening paragraph of proposed subsection**
681 **D are amended to reduce possible confusion regarding the multiple senses of the words**
682 **"redetermination" and "recount" currently used in this chapter. Language in proposed**
683 **subdivision D 3 is changed from "office" to "parties to" to express the more specific**
684 **requirements of similar language stricken from subsection C of proposed § 24.2-802.1.**
685 **Proposed section G is derived from subsection H of § 24.2-802. Technical changes are made.**

686 **§ 24.2-802.2. (Effective July 1, 2020) General recount procedures.**

687 I. A. For the purposes of this section:

688 "Overvote" means a ballot on which a voter casts a vote for a greater number of
689 candidates or positions than the number for which he was lawfully entitled to vote and no vote
690 shall be counted with respect to that office or issue.

691 "Undervote" means a ballot on which a voter casts a vote for a lesser number of
692 candidates or positions than the number for which he was lawfully entitled to vote.

693 B. The ~~determination~~ recount of the votes ~~in a recount~~ shall be based on votes cast in the
694 election and shall not take into account ~~(a)~~ (i) any absentee ballots or provisional ballots sought
695 to be cast but ruled invalid and not cast in the election, ~~(b)~~ (ii) ballots cast only for administrative
696 or test purposes and voided by the officers of election, or ~~(c)~~ (iii) ballots spoiled by a voter and
697 replaced with a new ballot.

698 C. The eligibility of any voter to have voted shall not be an issue in a recount.

699 D. There shall be only one recount of the vote in each precinct. The ~~redetermination~~
700 recount of the vote ~~in a recount~~ shall be conducted as follows:

701 1. For paper ballots, the recount officials shall hand count the paper ballots using the
702 standards promulgated by the State Board pursuant to ~~subsection A~~ § 24.2-802.

703 2. For ballot scanner machines, the recount officials shall rerun all the machine-readable
704 ballots through a scanner programmed to count only the votes for the office parties to or issue in
705 question in the recount and to set aside all ballots containing write-in votes, overvotes, and
706 undervotes. The ballots that are set aside, any ballots not accepted by the scanner, and any ballots
707 for which a scanner could not be programmed to meet the programming requirements of this
708 subdivision, shall be hand counted using the standards promulgated by the State Board pursuant
709 to ~~subsection A~~ § 24.2-802. If the total number of machine-readable ballots reported as counted
710 by the scanner plus the total number of ballots set aside by the scanner do not equal the total
711 number of ballots rerun through the scanner, then all ballots cast on ballot scanner machines for
712 that precinct shall be set aside to be counted by hand using the standards promulgated by the
713 State Board pursuant to ~~subsection A~~ § 24.2-802. Prior to running the machine-readable ballots
714 through the ballot scanner machine, the recount officials shall ensure that logic and accuracy
715 tests have been successfully performed on each scanner after the scanner has been programmed.
716 The result calculated for ballots accepted by the ballot scanner machine during the recount shall
717 be considered ~~the correct determination~~ for those machine-readable ballots unless the court finds
718 sufficient cause to rule otherwise.

719 ~~There shall be only one redetermination of the vote in each precinct.~~

720 E. At the conclusion of the recount of each precinct, the recount officials shall write down
721 the number of valid ballots cast, this number being obtained from the ballots cast in the precinct,
722 or from the ballots cast as shown on the statement of results if the ballots cannot be found, for
723 each of the two candidates or for and against the question. They shall submit the ballots or the
724 statement of results used, as to the validity of which questions exist, to the court. The written
725 statement of any one recount official challenging a ballot shall be sufficient to require its
726 submission to the court. If, on all ballot scanners, the number of persons voting in the election,
727 or the number of votes cast for the office or on the question, totals more than the number of
728 names on the pollbooks of persons voting on the voting machines, the figures recorded by the
729 machines shall be accepted as correct.

730 F. At the conclusion of the recount of all precincts, after allowing the parties to inspect
731 the questioned ballots, and after hearing arguments, the court shall rule on the validity of all
732 questioned ballots and votes. After ~~determining~~ settling all matters pertaining to the recount ~~and~~
733 ~~redetermination~~ of the vote as raised by the parties, the court shall certify to the State Board and
734 the electoral board ~~or boards~~ ~~(a)~~ (i) the vote for each party to the recount and declare the person
735 who received the higher number of votes to be nominated or elected, as appropriate, or ~~(b)~~ (ii)
736 the votes for and against the question and declare the outcome of the referendum. The
737 Department shall post on the Internet any and all changes made during the recount to the results
738 as previously certified by it pursuant to § 24.2-679.

739 H-G. The recount proceeding shall be final and not subject to appeal.

740 **Drafting note: Proposed subsection A is derived from subsection I of § 24.2-802.**
741 **Proposed subsections B and C are derived from the fourth paragraph and first sentence of**
742 **the fifth paragraph of subsection B of § 24.2-802. Proposed subsections D, E, and F are**
743 **derived from subsection D of § 24.2-802, excluding the first paragraph of that existing**
744 **subsection. The line "There shall be only one recount of the vote in each precinct" is moved**
745 **from the middle of the existing subsection to the beginning of proposed subsection D. The**
746 **first sentence of proposed subsection B and the opening paragraph of proposed subsection**

747 **D are amended to reduce possible confusion regarding the multiple senses of the words**
748 **"redetermination" and "recount" currently used in this chapter. Language in proposed**
749 **subdivision D 2 is changed from "office" to "parties to" to express the more specific**
750 **requirements of similar language stricken from subsection C of proposed § 24.2-802.1.**
751 **Proposed section G is derived from subsection H of § 24.2-802. Technical changes are made.**

752 **§ 24.2-802.3. Costs of the recount.**

753 ~~E.~~A. Costs of the recount shall be assessed against the counties and cities comprising the
754 election district when (i) the candidate petitioning for the recount is declared the winner; (ii) the
755 petitioners in a recount of a referendum win the recount; or (iii) there was between the candidate
756 apparently nominated or elected and the candidate petitioning for the recount a difference of not
757 more than one-half of one percent of the total vote cast for the two such candidates as determined
758 by the State Board or electoral board prior to the recount. Otherwise the costs of the recount shall
759 be assessed against the candidate petitioning for the recount or the petitioners in a recount of a
760 referendum. If more than one candidate petitions for a recount, the court may assess costs in an
761 equitable manner between the counties and cities and any such candidate if both are liable for
762 costs under this subsection. Costs incurred to date shall be assessed against any candidate or
763 petitioner who defaults or withdraws his petition.

764 ~~F.~~B. The court shall determine the costs of the recount subject to the following
765 limitations: (i) no per diem payment shall be assessed for salaried election officials; (ii) no per
766 diem payment to officers of election serving as recount officials shall exceed two-thirds of the
767 per diem paid such officers by the county or city for service on election day; and (iii) per diem
768 payments to alternates shall be allowed only if they serve.

769 ~~G.~~C. Any petitioner who may be assessed with costs under subsection ~~E.~~A. shall post a
770 bond with surety with the court in the amount of \$10 per precinct in the area subject to recount.
771 If the petitioner wins the recount, the bond shall not be forfeit. If the petitioner loses the recount,
772 the bond shall be forfeit only to the extent of the assessed costs. If the assessed costs exceed the
773 bond, he shall be liable for such excess.

774 **Drafting note: Proposed subsections A, B, and C are derived from subsections E, F,**
775 **and G of § 24.2-802 in order to provide a separate section addressing the costs of a recount.**
776 **Technical changes are made. This proposed section does not need to be set out twice**
777 **because the underlying language from the existing sections is identical.**

778 **§ 24.2-814. Contest following recount.**

779 A candidate in a primary or an election to office, who was originally declared a winner
780 and subsequently loses as the result of a recount, may file either (i) notice of his intent to contest
781 the result in accordance with § 24.2-803 or-§ 24.2-804 or (ii) a written complaint pursuant to §
782 24.2-805 or-§ 24.2-806. Such notice or complaint shall be filed within 10 days following the date
783 of the entry of the order of the recount court pursuant to subsection ~~D F~~ of § ~~24.2-802~~ 24.2-802.2.

784 In the case of a contest pursuant to § 24.2-803 or-§ 24.2-804, the times for filing the
785 answer, petition, and reply and for taking depositions and affidavits shall be set by the Committee
786 on Privileges and Elections of the appropriate house. The Committee may consider the
787 contestant's and contestee's recommendations for the procedural schedule.

788 This section shall not be applicable to a contest of an election for the President and Vice
789 President of the United States.

790 **Drafting note: Technical changes.**

Meeting materials for restructuring of 54.1-3408 will be available the week of August 12 - 16.

Code Section (page references are to bill draft)	Existing or New	Substance	Explanation
24.2-604 <i>page 1, beginning on line 8</i>	Existing		<p>Currently, this section contains provisions related to (i) prohibited activities within a certain distance outside of a polling place, (ii) prohibited activities within a polling place, (iii) presence of authorized representatives of political parties or candidates, (iv) presence of candidates, (v) presence of authorized neutral observers, (vi) presence of news media, (vii) electioneering, (viii) simulated election activities, and (ix) penalties.</p> <p>This bill limits the scope of § 24.2-604 to (i) prohibited activities within a certain distance outside of the polling place and (ii) prohibited activities within the polling place. The other provisions are moved to new sections §§ 24.2-604.4, 24.2-604.5, and 24.2-604.6.</p> <p>The following text is moved to new § 24.2-604.4:</p> <ul style="list-style-type: none"> • Lines 18-27: Moved to <i>lines 102-111</i> • Lines 27-28: Moved to <i>lines 112-113</i> • Lines 28-36: Moved to <i>lines 115-122</i> • Lines 36-37: Moved to <i>lines 113-114</i> • Lines 37-43: Moved to <i>lines 123-129</i> • Lines 43-48: Moved to <i>lines 130-134</i> • Lines 48-50: Moved to <i>lines 135-137</i> <p>The following text is retained in § 24.2-604 and relocated:</p> <ul style="list-style-type: none"> • Lines 57-59: Moved to subsection F (<i>lines 97-99</i>) <ul style="list-style-type: none"> ○ Note: The language on lines 57-58 applies to the entire Code section. In moving provisions of § 24.2-604 to new Code sections,

Code Section (page references are to bill draft)	Existing or New	Substance	Explanation
			<p>it is appropriate to have that same penalty language in those new Code sections as well. Therefore, this language also appears in:</p> <ul style="list-style-type: none"> ▪ § 24.2-604.4: <i>Lines 138-139</i> (authorized representatives) ▪ § 24.2-604.5: <i>Lines 146-148</i> (neutral observers) • Lines 60-62: Moved to subsection E (<i>lines 94-96</i>) <p>The following provisions are moved to new § 24.2-604.6:</p> <ul style="list-style-type: none"> • Lines 63-70: Moved to <i>lines 161-167</i> <p>The following provisions are moved to new § 24.2-604.5:</p> <ul style="list-style-type: none"> • Lines 71-76: Moved to <i>lines 141-146</i> • Lines 77-87: Moved to <i>lines 149-159</i> <p>Once all the changes are made, § 24.2-604 will consist of the following subsections:</p> <ul style="list-style-type: none"> ○ Subsection A: prohibited activities outside the polling place <ul style="list-style-type: none"> ▪ Lines 9-13 ○ Subsection B: notice of prohibited area outside of polling place <ul style="list-style-type: none"> ▪ Lines 14-17 ○ Subsection C: prohibited activities inside the polling place <ul style="list-style-type: none"> ▪ Lines 51-56 ○ Subsection D: provisions related to persons wearing campaign apparel or accessories in the polling place <ul style="list-style-type: none"> ▪ Lines 88-93 ○ Subsection E: provisions related to candidates entering polling place <ul style="list-style-type: none"> ▪ Lines 94-96

Code Section (page references are to bill draft)	Existing or New	Substance	Explanation
			<ul style="list-style-type: none"> ○ Subsection F: penalties for violating provisions of the section <ul style="list-style-type: none"> ▪ Lines 97-99
24.2-604.4 <i>page 4, beginning on line 100</i>	New	Authorized representatives of political parties or candidates permitted in the polling place, and their prohibited and permitted activities.	<p>Subsection A: requirement that one authorized representative of political parties and candidates be permitted to remain in the room where the election is being conducted and at each pollbook station; giving officers of election the discretion to permit additional authorized representatives</p> <ul style="list-style-type: none"> • Lines 102-111 <p>Subsection B: criteria and process for being designated an authorized representative</p> <ul style="list-style-type: none"> • Lines 112-114 <ul style="list-style-type: none"> ○ Requires authorized representatives to be qualified voters of the Commonwealth and prohibits candidates appearing on the ballot to serve as an authorized representative • Lines 115-122 <ul style="list-style-type: none"> ○ Sets out the process for being designated an authorized representative <p>Subsection C: requirement that authorized representatives be permitted to be close enough to see and hear what is happening at check-in table</p> <ul style="list-style-type: none"> • Lines 123-129 <p>Subsection D: allowing authorized representatives to use handheld wireless communication devices in polling place with some restrictions</p> <ul style="list-style-type: none"> • Lines 130-134 <p>Subsection E: prohibited activities by authorized representatives</p> <ul style="list-style-type: none"> • Lines 135-137

Code Section (page references are to bill draft)	Existing or New	Substance	Explanation
			<p>Subsection F: penalty for violating provisions of the section</p> <ul style="list-style-type: none"> • Lines 138-139 (<i>Language is duplicated from the current Subsection E of § 24.2-604</i>)
<p>24.2-604.5 <i>page 6, beginning on line 140</i></p>	<p>New</p>	<p>Additional persons authorized to be in polling places; restrictions on their conduct while in the polling place.</p>	<p>This section provides for additional persons to be allowed to be in the polling place on election day and places restrictions on their conduct while they are in the polling place.</p> <p>Subsection A: additional neutral observers</p> <ul style="list-style-type: none"> • Lines 141-148 <ul style="list-style-type: none"> ○ <i>Language on lines 146-148 is duplicated from the current Subsection E of § 24.2-604.</i> <p>Subsection B: news media</p> <ul style="list-style-type: none"> • Lines 149-159
<p>24.2-604.6 <i>page 7, beginning on line 160</i></p>	<p>New</p>	<p>Simulated election activities in the polling place.</p>	<p>This section permits minors to be in the polling place on election day in order to participate in simulated election activities.</p>
<p>24.2-649 <i>page 7, beginning on line 168</i></p>	<p>Existing</p>	<p>Technical amendment</p>	<p>Updating cross-reference (<i>line 212</i>)</p>
<p>24.2-700 <i>page 9, beginning on line 227</i></p>	<p>Existing</p>	<p>Technical amendment</p>	<p>Updating cross-reference (<i>line 261</i>)</p>
<p>24.2-701 <i>page 10, beginning on line 266</i></p>	<p>Existing</p>	<p>Technical amendment</p>	<p>Updating cross-reference (<i>line 351</i>)</p>

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 24.2-604, 24.2-649, 24.2-700, and 24.2-701 of the Code of Virginia and
2 to amend the Code of Virginia by adding sections numbered 24.2-604.4, 24.2-604.5, and 24.2-
3 604.6, relating to polling place activities; reorganization of sections; technical amendments.

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

5 **1. That §§ 24.2-604, 24.2-649, 24.2-700, and 24.2-701 of the Code of Virginia are amended and**
6 **reenacted and that the Code of Virginia is amended by adding sections numbered 24.2-604.4, 24.2-**
7 **604.5, and 24.2-604.6 as follows:**

8 **§ 24.2-604. Polling places; prohibited activities; prohibited area; penalties.**

9 A. During the times the polls are open and ballots are being counted, it ~~shall be~~ is unlawful for any
10 person (i) to loiter or congregate within 40 feet of any entrance of any polling place; (ii) within such
11 distance to give, tender, or exhibit any ballot, ticket, or other campaign material to any person or to solicit
12 or in any manner attempt to influence any person in casting his vote; or (iii) to hinder or delay a qualified
13 voter in entering or leaving a polling place.

14 B. Prior to opening the polls, the officers of election shall post, in the area within 40 feet of any
15 entrance to the polling place, sufficient notices which state "Prohibited Area" in two-inch type. The notices
16 shall also state the provisions of this section in not less than 24-point type. The officers of election shall
17 post the notices within the prohibited area to be visible to voters and the public.

18 ~~C. The officers of election shall permit one authorized representative of each political party or~~
19 ~~independent candidate in a general or special election, or one authorized representative of each candidate~~
20 ~~in a primary election, to remain in the room in which the election is being conducted at all times. A~~
21 ~~representative may serve part of the day and be replaced by successive representatives. The officers of~~
22 ~~election shall have discretion to permit up to three authorized representatives of each political party or~~
23 ~~independent candidate in a general or special election, or up to three authorized representatives of each~~
24 ~~candidate in a primary election, to remain in the room in which the election is being conducted. The~~
25 ~~officers shall permit one such representative for each pollbook station. However, no more than one such~~

26 ~~representative for each pollbook station or three representatives of any political party or independent~~
27 ~~candidate, whichever number is larger, shall be permitted in the room at any one time. Each authorized~~
28 ~~representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each representative~~
29 ~~shall present to the officers of election a written statement designating him to be a representative of the~~
30 ~~party or candidate and signed by the county or city chairman of his political party, the independent~~
31 ~~candidate, or the primary candidate, as appropriate. If the county or city chairman is unavailable to sign~~
32 ~~such a written designation, such a designation may be made by the state or district chairman of the political~~
33 ~~party. However, no written designation made by a state or district chairman shall take precedence over a~~
34 ~~written designation made by the county or city chairman. Such statement, bearing the chairman's or~~
35 ~~candidate's original signature, may be photocopied, and such photocopy shall be as valid as if the copy~~
36 ~~had been signed. No candidate whose name is printed on the ballot shall serve as a representative of a~~
37 ~~party or candidate for purposes of this section. Authorized representatives shall be allowed, whether in a~~
38 ~~regular polling place or central absentee voter precinct, to be close enough to the voter check-in table to~~
39 ~~be able to hear and see what is occurring; however, such observation shall not violate the secret vote~~
40 ~~provision of Article II, Section 3 of the Constitution of Virginia or otherwise interfere with the orderly~~
41 ~~process of the election. Any representative who complains to the chief officer of election that he is unable~~
42 ~~to hear or see the process may accept the chief officer's decision or, if dissatisfied, he may immediately~~
43 ~~appeal the decision to the local electoral board or general registrar. Authorized representatives shall be~~
44 ~~allowed, whether in a regular polling place or central absentee voter precinct, to use a handheld wireless~~
45 ~~communications device, but shall not be allowed to use such a device to capture a digital image inside the~~
46 ~~polling place or central absentee voter precinct. The officers of election may prohibit the use of cellular~~
47 ~~telephones or other handheld wireless communications devices if such use will result in a violation of~~
48 ~~subsection A or D or § 24.2-607. Authorized representatives shall not be allowed in any case to provide~~
49 ~~assistance to any voter as permitted under § 24.2-649 or to wear any indication that they are authorized to~~
50 ~~assist voters either inside the polling place or within 40 feet of any entrance to the polling place.~~

51 D. C. ~~It shall be~~ is unlawful for any authorized representative permitted in the polling place
52 pursuant to § 24.2-604.4, any voter, or any other person in the room to (i) hinder or delay a qualified voter;

53 (ii) give, tender, or exhibit any ballot, ticket, or other campaign material to any person; (iii) solicit or in
54 any manner attempt to influence any person in casting his vote; (iv) hinder or delay any officer of election;
55 (v) be in a position to see the marked ballot of any other voter; or (vi) otherwise impede the orderly conduct
56 of the election.

57 ~~E. The officers of election may require any person who is found by a majority of the officers~~
58 ~~present to be in violation of this section to remain outside of the prohibited area. Any person violating~~
59 ~~subsection A or D is guilty of a Class 1 misdemeanor.~~

60 ~~F. This section shall not be construed to prohibit a candidate from entering any polling place on~~
61 ~~the day of the election to vote, or to visit a polling place for no longer than 10 minutes per polling place~~
62 ~~per election day, provided that he complies with the restrictions stated in subsections A, D, and J.~~

63 ~~G. This section shall not be construed to prohibit a minor from entering a polling place on the day~~
64 ~~of the election to vote in a simulated election at that polling place, provided that the local electoral board~~
65 ~~or general registrar has determined that such polling place can accommodate simulated election activities~~
66 ~~without interference or substantial delay in the orderly conduct of the official voting process. Persons~~
67 ~~supervising or working in a simulated election in which minors vote may remain within such polling place.~~
68 ~~The local electoral board or general registrar and the chief officer for the polling place shall exercise~~
69 ~~authority over, but shall have no responsibility for the administration of, simulated election related~~
70 ~~activities at the polling place.~~

71 ~~H. A local electoral board or general registrar may authorize in writing the presence of additional~~
72 ~~neutral observers as may be deemed appropriate, except as otherwise prohibited or limited by this section.~~
73 ~~Such observers shall comply with the restrictions in subsections A and D and shall not be allowed in any~~
74 ~~case to provide assistance to any voter as permitted under § 24.2-649 or to wear any indication that they~~
75 ~~are authorized to assist voters either inside the polling place or within 40 feet of any entrance to the polling~~
76 ~~place.~~

77 ~~I. The officers of election shall permit representatives of the news media to visit and film or~~
78 ~~photograph inside the polling place for a reasonable and limited period of time while the polls are open.~~
79 ~~However, the media (i) shall comply with the restrictions in subsections A and D; (ii) shall not film or~~

~~80 photograph any person who specifically asks the media representative at that time that he not be filmed or
81 photographed; (iii) shall not film or photograph the voter or the ballot in such a way that divulges how
82 any individual voter is voting; and (iv) shall not film or photograph the voter list or any other voter record
83 or material at the precinct in such a way that it divulges the name or other information concerning any
84 individual voter. Any interviews with voters, candidates or other persons, live broadcasts, or taping of
85 reporters' remarks, shall be conducted outside of the polling place and the prohibited area. The officers of
86 election may require any person who is found by a majority of the officers present to be in violation of
87 this subsection to leave the polling place and the prohibited area.~~

88 ~~J-D.~~ The provisions of subsections A and ~~D C~~ shall not be construed to prohibit a person who
89 approaches or enters the polling place for the purpose of voting from wearing a shirt, hat, or other apparel
90 on which a candidate's name or a political slogan appears or from having a sticker or button attached to
91 his apparel on which a candidate's name or a political slogan appears. This exemption shall not apply to
92 candidates, representatives of candidates, or any other person who approaches or enters the polling place
93 for any purpose other than voting.

94 ~~E. This section shall not be construed to prohibit a candidate from entering any polling place on
95 the day of the election to vote, or to visit a polling place for no longer than 10 minutes per polling place
96 per election day, provided that he complies with the restrictions stated in subsections A, C, and D.~~

97 ~~F. The officers of election may require any person who is found by a majority of the officers
98 present to be in violation of this section to remain outside of the prohibited area. Any person violating
99 subsection A or C is guilty of a Class 1 misdemeanor.~~

100 **§ 24.2-604.4. Polling places; authorized representatives of party or candidate; prohibited**
101 **activities.**

102 ~~A. The officers of election shall permit one authorized representative of each political party or
103 independent candidate in a general or special election, or one authorized representative of each candidate
104 in a primary election, to remain in the room in which the election is being conducted at all times. A
105 representative may serve part of the day and be replaced by successive representatives. The officers of
106 election shall have discretion to permit up to three authorized representatives of each political party or~~

107 independent candidate in a general or special election, or up to three authorized representatives of each
108 candidate in a primary election, to remain in the room in which the election is being conducted. The
109 officers shall permit one such representative for each pollbook station. However, no more than one such
110 representative for each pollbook station or three representatives of any political party or independent
111 candidate, whichever number is larger, shall be permitted in the room at any one time.

112 B. Each authorized representative shall be a qualified voter of any jurisdiction of the
113 Commonwealth. No candidate whose name is printed on the ballot shall serve as a representative of a
114 party or candidate for purposes of this section.

115 Each representative shall present to the officers of election a written statement designating him to
116 be a representative of the party or candidate that is signed by the county or city chairman of his political
117 party, the independent candidate, or the primary candidate, as appropriate. If the county or city chairman
118 is unavailable to sign such a written designation, such a designation may be made by the state or district
119 chairman of the political party. However, no written designation made by a state or district chairman shall
120 take precedence over a written designation made by the county or city chairman. Such statement, bearing
121 the chairman's or candidate's original signature, may be photocopied, and such photocopy shall be as valid
122 as if the copy had been signed.

123 C. Authorized representatives shall be allowed, whether in a regular polling place or central
124 absentee voter precinct, to be close enough to the voter check-in table to be able to hear and see what is
125 occurring; however, such observation shall not violate the secret vote provision of Article II, Section 3 of
126 the Constitution of Virginia or otherwise interfere with the orderly process of the election. Any
127 representative who complains to the chief officer of election that he is unable to hear or see the process
128 may accept the chief officer's decision or, if dissatisfied, he may immediately appeal the decision to the
129 local electoral board or general registrar.

130 D. Authorized representatives shall be allowed, whether in a regular polling place or central
131 absentee voter precinct, to use a handheld wireless communications device but shall not be allowed to use
132 such a device to capture a digital image inside the polling place or central absentee voter precinct. The

133 officers of election may prohibit the use of cellular telephones or other handheld wireless communications
134 devices if such use will result in a violation of subsection A or C of § 24.2-604 or § 24.2-607.

135 E. Authorized representatives shall not be allowed in any case to provide assistance to any voter
136 as permitted under § 24.2-649 or to wear any indication that they are authorized to assist voters either
137 inside the polling place or within 40 feet of any entrance to the polling place.

138 F. The officers of election may require any person who is found by a majority of the officers
139 present to be in violation of this section to remain outside of the prohibited area.

140 **§ 24.2-604.5. Polling places; presence of additional persons authorized.**

141 A. A local electoral board or general registrar may authorize in writing the presence in the polling
142 place of additional neutral observers as may be deemed appropriate, except as otherwise prohibited or
143 limited by the provisions of § 24.2-604. Such observers shall comply with the restrictions in subsections
144 A and C of § 24.2-604 and shall not be allowed in any case to provide assistance to any voter as permitted
145 under § 24.2-649 or to wear any indication that they are authorized to assist voters either inside the polling
146 place or within 40 feet of any entrance to the polling place. The officers of election may require any person
147 who is found by a majority of the officers present to be in violation of this subsection to remain outside
148 of the prohibited area.

149 B. The officers of election shall permit representatives of the news media to visit and film or
150 photograph inside the polling place for a reasonable and limited period of time while the polls are open.
151 However, the media (i) shall comply with the restrictions in subsections A and C of § 24.2-604; (ii) shall
152 not film or photograph any person who specifically asks the media representative at that time that he not
153 be filmed or photographed; (iii) shall not film or photograph the voter or the ballot in such a way that
154 divulges how any individual voter is voting; and (iv) shall not film or photograph the voter list or any
155 other voter record or material at the precinct in such a way that it divulges the name or other information
156 concerning any individual voter. Any interviews with voters, candidates, or other persons; live broadcasts;
157 or taping of reporters' remarks shall be conducted outside of the polling place and the prohibited area. The
158 officers of election may require any person who is found by a majority of the officers present to be in
159 violation of this subsection to leave the polling place and the prohibited area.

160 § 24.2-604.6. Polling places; simulated election activities.

161 Minors may be permitted to enter a polling place on the day of the election to vote in a simulated
162 election at that polling place, provided that the local electoral board or general registrar has determined
163 that such polling place can accommodate simulated election activities without interference or substantial
164 delay in the orderly conduct of the official voting process. Persons supervising or working in a simulated
165 election in which minors vote may remain within such polling place. The local electoral board or general
166 registrar and the chief officer for the polling place shall exercise authority over, but shall have no
167 responsibility for the administration of, simulated election related activities at the polling place.

168 **§ 24.2-649. Assistance for certain voters; penalties.**

169 A. Any voter age 65 or older or physically disabled may request and then shall be handed a printed
170 ballot by an officer of election outside the polling place but within 150 feet of the entrance to the polling
171 place. The voter shall mark the printed ballot in the officer's presence but in a secret manner and, obscuring
172 his vote, return the ballot to the officer. The officer shall immediately return to the polling place and shall
173 deposit a paper ballot in the ballot container in accordance with § 24.2-646 or a machine-readable ballot
174 in the ballot scanner machine in accordance with the instructions of the State Board.

175 Any county or city that has acquired an electronic voting machine that is so constructed as to be
176 easily portable may use the voting machine in lieu of a printed ballot for the voter requiring assistance
177 pursuant to this subsection. However, the electronic voting machine may be used in lieu of a printed ballot
178 only so long as: (i) the voting machine remains in the plain view of two officers of election representing
179 two political parties, or in a primary election, two officers of election representing the party conducting
180 the primary, provided that if the use of two officers for this purpose would result in too few officers
181 remaining in the polling place to meet legal requirements, the voting machine shall remain in plain view
182 of one officer who shall be either the chief officer or the assistant chief officer and (ii) the voter casts his
183 ballot in a secret manner unless the voter requests assistance pursuant to this section. After the voter has
184 completed voting his ballot, the officer or officers shall immediately return the voting machine to its
185 assigned location inside the polling place. The machine number, the time that the machine was removed
186 and the time that it was returned, the number on the machine's public counter before the machine was

187 removed and the number on the same counter when it was returned, and the name or names of the officer
188 or officers who accompanied the machine shall be recorded on the statement of results.

189 B. Any qualified voter who requires assistance to vote by reason of physical disability or inability
190 to read or write may, if he so requests, be assisted in voting. If he is blind, he may designate an officer of
191 election or any other person to assist him. If he is unable to read and write or disabled for any cause other
192 than blindness, he may designate an officer of election or some other person to assist him other than the
193 voter's employer or agent of that employer, or officer or agent of the voter's union.

194 The officer of election or other person so designated shall not enter the booth with the voter unless
195 (i) the voter signs a request stating that he requires assistance by reason of physical disability or inability
196 to read or write and (ii) the officer of election or other person signs a statement that he is not the voter's
197 employer or an agent of that employer, or an officer or agent of the voter's union, and that he will act in
198 accordance with the requirements of this section. The request and statement shall be on a single form
199 furnished by the State Board. If the voter is unable to sign the request, his own mark acknowledged by
200 him before an officer of election shall be sufficient signature, provided no mark shall be required of a
201 voter who is blind. An officer of election shall advise the voter and person assisting the voter of the
202 requirements of this section and record the name of the voter and the name and address of the person
203 assisting him.

204 The officer of election or other person so designated shall assist the qualified voter in the
205 preparation of his ballot in accordance with his instructions and without soliciting his vote or in any
206 manner attempting to influence his vote and shall not in any manner divulge or indicate, by signs or
207 otherwise, how the voter voted on any office or question. If a printed ballot is used, the officer or other
208 person so designated shall deposit the ballot in the ballot container in accordance with § 24.2-646 or in
209 the ballot scanner machine in accordance with the instructions of the State Board.

210 C. If the voter requires assistance in a language other than English and has not designated a person
211 to assist him, an officer of election, before he assists as interpreter, shall inquire of the representatives
212 authorized to be present pursuant to ~~§ 24.2-604~~ [§ 24.2-604.4](#) whether they have a volunteer available who
213 can interpret for the voter. One representative interpreter for each party or candidate, insofar as available,

214 shall be permitted to observe the officer of election communicate with the voter. The voter may designate
215 one of the volunteer party or candidate interpreters to provide assistance. A person so designated by the
216 voter shall meet all the requirements of this section for a person providing assistance.

217 D. A person who willfully violates subsection B or C is guilty of a Class 1 misdemeanor. In
218 addition, the provisions of § 24.2-1016 and its felony penalties for false statements shall be applicable to
219 any request or statement signed pursuant to this section, and the provisions of §§ 24.2-704 and 24.2-1012
220 and the felony penalties for violations of the law related to providing assistance to absentee voters shall
221 be applicable in such cases.

222 E. In any precinct in which an electronic voting machine is available that provides an audio ballot,
223 the officers of election shall notify a voter requiring assistance pursuant to this section that such machine
224 is available for him to use to vote in privacy without assistance and the officers of election shall instruct
225 the voter on the use of the voting machine. Nothing in this section shall be construed to require a voter to
226 use the machine unassisted.

227 **§ 24.2-700. Persons entitled to vote by absentee ballot.**

228 A. The following registered voters may vote by absentee ballot in accordance with the provisions
229 of this chapter in any election in which they are qualified to vote:

230 1. Any person who, in the regular and orderly course of his business, profession, or occupation or
231 while on personal business or vacation, will be absent from the county or city in which he is entitled to
232 vote;

233 2. Any person who is (i) a member of a uniformed service, as defined in § 24.2-452, on active
234 duty, (ii) temporarily residing outside of the United States, or (iii) the spouse or dependent residing with
235 any person listed in clause (i) or (ii), and who will be absent on the day of the election from the county or
236 city in which he is entitled to vote;

237 3. Any student attending a school or institution of higher education, or his spouse, who will be
238 absent on the day of election from the county or city in which he is entitled to vote;

239 4. Any duly registered person with a disability, as defined in § 24.2-101, who is unable to go in
240 person to the polls on the day of election because of his disability, illness, or pregnancy;

241 5. Any person who is confined while awaiting trial or for having been convicted of a misdemeanor,
242 provided that the trial or release date is scheduled on or after the third day preceding the election. Any
243 person who is awaiting trial and is a resident of the county or city where he is confined shall, on his
244 request, be taken to the polls to vote on election day if his trial date is postponed and he did not have an
245 opportunity to vote absentee;

246 6. Any person who is a member of an electoral board, registrar, officer of election, or custodian of
247 voting equipment;

248 7. Any duly registered person who is unable to go in person to the polls on the day of the election
249 because he is primarily and personally responsible for the care of an ill or disabled family member who is
250 confined at home;

251 8. Any duly registered person who is unable to go in person to the polls on the day of the election
252 because of an obligation occasioned by his religion;

253 9. Any person who, in the regular and orderly course of his business, profession, or occupation,
254 will be at his place of work and commuting to and from his home to his place of work for 11 or more
255 hours of the 13 hours that the polls are open pursuant to § 24.2-603;

256 10. Any person who is a law-enforcement officer, as defined in § 18.2-51.1; firefighter, as defined
257 in § 65.2-102; volunteer firefighter, as defined in § 27-42; search and rescue personnel, as defined in §
258 18.2-51.1; or emergency medical services personnel, as defined in § 32.1-111.1;

259 11. Any person who has been designated by a political party, independent candidate, or candidate
260 in a primary election to be a representative of the party or candidate inside a polling place on the day of
261 the election pursuant to ~~subsection C of § 24.2-604 and § 24.2-639~~ §§ 24.2-604.4 and 24.2-639; or

262 12. Any person granted a protective order issued by or under the authority of any court of
263 competent jurisdiction.

264 B. Any registered voter may vote by absentee ballot in person beginning on the second Saturday
265 immediately preceding any election in which he is qualified to vote.

266 **§ 24.2-701. Application for absentee ballot.**

267 A. The State Board shall furnish each general registrar with a sufficient number of applications for
268 official absentee ballots. The registrars shall furnish applications to persons requesting them.

269 The State Board shall implement a system that enables eligible persons to request and receive an
270 absentee ballot application electronically through the Internet. Electronic absentee ballot applications shall
271 be in a form approved by the State Board.

272 Except as provided in § 24.2-703, a separate application shall be completed for each election in
273 which the applicant offers to vote. An application for an absentee ballot may be accepted the later of (i)
274 12 months before an election or (ii) the day following any election held in the twelfth month prior to the
275 election in which the applicant is applying to vote.

276 An application that is completed in person at the same time that the applicant registers to vote shall
277 be held and processed no sooner than the fifth day after the date that the applicant registered to vote;
278 however, this requirement shall not be applicable to any person who is qualified to vote absentee under
279 subdivision A 2 of § 24.2-700.

280 Any application received before the ballots are printed shall be held and processed as soon as the
281 printed ballots for the election are available.

282 For the purposes of this chapter, the general registrar's office shall be open a minimum of eight
283 hours between the hours of 8:00 a.m. and 5:00 p.m. on the first and second Saturday immediately
284 preceding all elections.

285 Unless the applicant is disabled, all applications for absentee ballots shall be signed by the
286 applicant who shall state, subject to felony penalties for making false statements pursuant to § 24.2-1016,
287 that to the best of his knowledge and belief the facts contained in the application are true and correct and
288 that he has not and will not vote in the election at any other place in Virginia or in any other state. If the
289 applicant is unable to sign the application, a person assisting the applicant will note this fact on the
290 applicant signature line and provide his signature, name, and address.

291 B. Applications for absentee ballots shall be completed in the following manner:

292 1. An application completed in person shall be completed only in the office of the general registrar
293 and signed by the applicant in the presence of a registrar. The applicant shall provide one of the forms of

294 identification specified in subsection B of § 24.2-643. Any applicant who does not show one of the forms
295 of identification specified in subsection B of § 24.2-643 shall be offered a provisional ballot under the
296 provisions of § 24.2-653. The State Board of Elections shall provide instructions to the general registrar
297 for the handling and counting of such provisional ballots pursuant to subsection B of § 24.2-653 and this
298 section.

299 2. Any other application may be made by mail, electronic or telephonic transmission to a facsimile
300 device if one is available to the office of the general registrar or the office of the State Board if a device is
301 not available locally, or other means. The application shall be on a form furnished by the registrar or, if
302 made under subdivision A 2 of § 24.2-700, may be on a federal postcard application prescribed pursuant
303 to 52 U.S.C. § 20301(b)(2). The federal postcard application may be accepted the later of (i) 12 months
304 before an election or (ii) the day following any election held in the twelfth month prior to the election in
305 which the applicant is applying to vote. The application shall be made to the appropriate registrar no later
306 than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote.

307 C. Applications for absentee ballots shall contain the following information:

308 1. The applicant's printed name, the last four digits of the applicant's social security number, and
309 the reason the applicant will be absent or cannot vote at his polling place on the day of the election.
310 However, an applicant completing the application in person shall not be required to provide the last four
311 digits of his social security number;

312 2. A statement that he is registered in the county or city in which he offers to vote and his residence
313 address in such county or city. Any person temporarily residing outside the United States shall provide
314 the last date of residency at his Virginia residence address, if that residence is no longer available to him.
315 Any person who makes application under subdivision A 2 of § 24.2-700 who is not a registered voter may
316 file the applications to register and for a ballot simultaneously;

317 3. The complete address to which the ballot is to be sent directly to the applicant, unless the
318 application is made in person at a time when the printed ballots for the election are available and the
319 applicant chooses to vote in person at the time of completing his application. The address given shall be
320 (i) the address of the applicant on file in the registration records; (ii) the address at which he will be located

321 while absent from his county or city; or (iii) the address at which he will be located while temporarily
322 confined due to a disability or illness. No ballot shall be sent to, or in care of, any other person; and

323 4. In the case of a person, or the spouse or dependent of a person, who is on active duty as a
324 member of the uniformed services as defined in § 24.2-452, the branch of service to which he or the spouse
325 belongs; or

326 5. In the case of a student, or the spouse of a student, who is attending a school or institution of
327 higher education, the name of the school or institution of higher education; or

328 6. In the case of any duly registered person with a disability, as defined in § 24.2-101, who is
329 unable to go in person to the polls on the day of the election because of his disability, illness, or pregnancy,
330 that he is a person with a disability, illness, or pregnancy; or

331 7. In the case of a person who is confined awaiting trial or for having been convicted of a
332 misdemeanor, the name of the institution of confinement; or

333 8. In the case of a person who will be absent on election day for business reasons, the name of his
334 employer or business; or

335 9. In the case of a person who will be absent on election day for personal business or vacation
336 reasons, the name of the county or city in Virginia or the state or country to which he is traveling; or

337 10. In the case of a person who is unable to go to the polls on the day of election because he is
338 primarily and personally responsible for the care of an ill or disabled family member who is confined at
339 home, his relationship to the family member; or

340 11. In the case of a person who is unable to go to the polls on the day of election because of an
341 obligation occasioned by his religion, that he has an obligation occasioned by his religion; or

342 12. In the case of a person who, in the regular and orderly course of his business, profession, or
343 occupation, will be at his place of work and commuting to and from his home to his place of work for 11
344 or more hours of the 13 hours that the polls are open pursuant to § 24.2-603, the name of his business or
345 employer and hours he will be at the workplace and commuting on election day; or

346 13. In the case of a law-enforcement officer, as defined in § 18.2-51.1; firefighter, as defined in §
347 65.2-102; volunteer firefighter, as defined in § 27-42; search and rescue personnel, as defined in § 18.2-
348 51.1; or emergency medical services personnel, as defined in § 32.1-111.1, that he is a first responder; or

349 14. In the case of a person who has been designated by a political party, independent candidate, or
350 candidate in a primary election to be a representative of the party or candidate inside a polling place on
351 the day of the election pursuant to ~~subsection C of § 24.2-604 and § 24.2-639~~ §§ 24.2-604.4 and 24.2-639,
352 the fact that he is so designated; or

353 15. In the case of a person who has been granted a protective order issued by or under the authority
354 of any court of competent jurisdiction, the name of the county or city in Virginia or the state of the issuing
355 court.

356 D. An application shall not be required for any registered voter appearing in person to cast an
357 absentee ballot during the period beginning on the second Saturday immediately preceding the election in
358 which he is offering to vote.

359 #

Code Section (page references are to bill draft)	Existing or New	Substance	Explanation
24.2-651.1 <i>page 1, beginning on line 9</i>	Existing	Sets out a reason a voter would be permitted to provisionally vote.	Technical amendment for consistent language.
24.2-652 <i>page 1, beginning on line 14</i>	Existing	Sets out a reason a voter would be permitted to provisionally vote.	<p>Currently, this section provides the conditions that must be met in order for a voter whose name does not appear in the pollbook to be permitted to cast a regular ballot in the polling place. This section does not provide what happens when those conditions cannot be met; that is provided for in another section.</p> <p>So that everything relevant to such a voter is in a single section, new subsection B is added to § 24.2-652 (<i>lines 30-33</i>) with the applicable language moved from § 24.2-653 (<i>lines 35-37 and lines 49-50</i>).</p>
24.2-653 <i>page 2, beginning on line 34</i>	Existing	Sets out the provisional voting procedures in the polling place.	<p>Currently, this section contains (i) provisional voting procedures in the polling place, (ii) the process for the electoral board to determine the validity of provisional votes after election day, and (iii) reasons a voter would be permitted to provisionally vote.</p> <p>This bill removes language relevant to (ii) and (iii), so the scope of this section is now how provisional voting happens in the polling place.</p> <p>Lines 35-37 and lines 49-50 are moved to subsection B of § 24.2-652 (<i>lines 30-33</i>). The text applies only to those voters not appearing on the pollbook.</p> <p>Lines 39-40</p> <ul style="list-style-type: none"> • Adds language to reference all other sections providing for provisional voting

Code Section (page references are to bill draft)	Existing or New	Substance	Explanation
			<p>Lines 54-61</p> <ul style="list-style-type: none"> • The language of the third romanette only applies to certain provisional voters, so technical amendments are made so that content is its own sentence. <p>The following are moved to new § 24.2-653.01:</p> <ul style="list-style-type: none"> • Lines 61-65: Moved to <i>lines 134-137</i> • Lines 72-74: Moved to <i>lines 132-134</i> • Lines 74-78: Moved to <i>lines 138-141</i> • Lines 79-91: Moved to <i>lines 142-154</i> • Lines 92-96: Moved to <i>lines 155-159</i> • Lines 97-100: Moved to <i>lines 160-163</i> • Lines 100-105: Moved to <i>lines 166-171</i> • Lines 106-107: Moved to <i>lines 163-165</i> • Lines 108-110: Moved to <i>lines 172-175</i> • Lines 111-116: Moved to <i>lines 176-181</i> • Lines 117-119: Moved to <i>lines 182-184</i> <p>The following is moved to new § 24.2-653.2:</p> <ul style="list-style-type: none"> • Lines 120-130: Moved to <i>lines 198-210</i>
<p>24.2-653.01 <i>page 6, beginning on line 131</i></p>	<p>New</p>	<p>Sets out the process and procedures for the electoral board's determination of the validity of provisional ballots after election day.</p>	<p>Subsection A: provisions for having and delaying the validity determination meeting</p> <ul style="list-style-type: none"> • Lines 132-134 <ul style="list-style-type: none"> ○ Requires the electoral board to meet to determine the validity of provisional votes

Code Section (page references are to bill draft)	Existing or New	Substance	Explanation
			<ul style="list-style-type: none"> • Lines 134-137 <ul style="list-style-type: none"> ○ Permits voter to request an extension on the validity determination and authorizes the electoral board to grant such an extension • Lines 138-141 <ul style="list-style-type: none"> ○ Provides for temporary adjournment of the validity determination meeting <p>Subsection B: provisions for who may be in the room during the validity determination meeting</p> <ul style="list-style-type: none"> • Lines 142-154 <ul style="list-style-type: none"> ○ Provides for authorized representatives to be present in the room during the validity determination meeting • Lines 155-159 <ul style="list-style-type: none"> ○ Limits attendance at the validity determination meeting to certain persons <p>Subsection C: provisions for counting or not counting a provisional vote</p> <ul style="list-style-type: none"> • Lines 160-165 <ul style="list-style-type: none"> ○ Provides for why a provisional vote is not counted and requires notice to the voter • Lines 166-171 <ul style="list-style-type: none"> ○ Provides for why a provisional vote is counted • Lines 172-175 <ul style="list-style-type: none"> ○ Provides for process when the electoral board determines a voter was entitled to vote <p>Subsection D: provisions for the counting of ballots determined to be valid and the certification of results</p> <ul style="list-style-type: none"> • Lines 176-181

Code Section (page references are to bill draft)	Existing or New	Substance	Explanation
			Subsection E: provisions for certain materials to be delivered to and retained by clerk of the circuit court <ul style="list-style-type: none"> • Lines 182-184
24.2-653.1 <i>page 8, beginning on line 185</i>	Existing	Sets out a reason a voter would be permitted to provisionally vote.	Technical amendments are made to make this section more concise and to update a cross-reference.
24.2-653.2 <i>page 8, beginning on line 198</i>	New	Sets out a reason certain ballots would be treated as provisional ballots.	This section provides for ballots that are cast after the normal close of polling hours due to a court-ordered extension to be treated as provisional ballots. The section also includes provisions related to the handling of such ballots. This section consists entirely of language moved from the current subsection C of § 24.2-653 (<i>lines 120-130</i>).
24.2-701 <i>page 8, beginning on line 211</i>	Existing	Technical amendment	Updating cross-reference (<i>lines 242-243</i>)
24.2-701.1 <i>page 12, beginning on line 304</i>	Existing	Technical amendment	Updating cross-reference (<i>line 321</i>)
24.2-706 <i>page 14, beginning on line 347</i>	Existing	Technical amendment	Updating cross-reference (<i>lines 410 and 412</i>)
24.2-710 <i>page 17, beginning on line 444</i>	Existing	Technical amendment	Updating cross-reference (<i>lines 481 and 488-489</i>)

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 24.2-651.1, 24.2-652, 24.2-653, 24.2-653.1, 24.2-701, 24.2-701.1, 24.2-
2 706, and 24.2-710 of the Code of Virginia and to amend the Code of Virginia by adding sections
3 numbered 24.2-653.01 and 24.2-653.2, relating to provisional voting; reorganization of sections;
4 technical amendments.

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

6 **1. That §§ 24.2-651.1, 24.2-652, 24.2-653, 24.2-653.1, 24.2-701, 24.2-701.1, 24.2-706, and 24.2-710 of**
7 **the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by**
8 **adding sections numbered 24.2-653.01 and 24.2-653.2 as follows:**

9 **§ 24.2-651.1. Voter who is shown as having already voted; provisional ballots.**

10 Any person who offers to vote, who is listed on the pollbook, and whose name is marked to indicate
11 that he has already voted in person in the election shall cast a provisional ballot ~~as provided in pursuant to~~
12 § 24.2-653. The State Board of Elections shall provide instructions to the electoral boards for the handling
13 and counting of such provisional ballots.

14 **§ 24.2-652. Voter whose name erroneously omitted from pollbook; provisional ballots.**

15 A. When a person offers to vote and his name does not appear on the pollbook, the officers of
16 election shall permit him to vote only if all of the following conditions are met:

17 1. An officer of election is informed by the general registrar that the voter is registered to vote, that
18 his registration has not been cancelled, and that his name is erroneously omitted from the pollbook.

19 2. The voter signs a statement, subject to felony penalties for false statements pursuant to § 24.2-
20 1016, that he is a qualified and registered voter of that precinct, a resident of that precinct, and his
21 registration is not subject to cancellation pursuant to §§ 24.2-430, 24.2-431, and 24.2-432; and he
22 provides, subject to such penalties, all the information required to identify himself including the last four
23 digits of his social security number, if any, full name including the maiden or any other prior legal name,
24 birthdate, and complete address.

25 3. The officer of election enters the identifying information for the voter on the pollbook.

26 When the voter has signed the statement and is permitted to vote, the officers of election shall
27 mark his name on the pollbook with the next consecutive number from the voter count form, or shall enter
28 that the voter has voted if the pollbook is in electronic form, and shall indicate on the pollbook that he has
29 signed the required statement in accordance with the instructions of the State Board.

30 B. If the general registrar is not available or cannot state that the person is registered to vote, such
31 person shall be allowed to vote by provisional ballot pursuant to § 24.2-653. The officers of election shall
32 provide to him an application for registration. The State Board of Elections shall provide instructions to
33 the electoral boards for the handling and counting of such provisional ballots.

34 **§ 24.2-653. Provisional voting; procedures in polling place.**

35 ~~A. When a person offers to vote pursuant to § 24.2-652 and the general registrar is not available~~
36 ~~or cannot state that the person is registered to vote, then such person shall be allowed to vote by printed~~
37 ~~ballot in the manner provided in this section. This procedure shall also apply when required by § 24.2-643~~
38 ~~or 24.2-651.1.~~

39 ~~Such~~ Any person voting provisionally pursuant to subsection B of § 24.2-643, § 24.2-651.1,
40 subsection B of § 24.2-652, or § 24.2-653.1 or 24.2-653.2 shall be given a printed ballot and provide,
41 subject to the penalties for making false statements pursuant to § 24.2-1016, on a green envelope supplied
42 by the Department of Elections, the identifying information required on the envelope, including the last
43 four digits of his social security number, if any, full name including the maiden or any other prior legal
44 name, date of birth, complete address, and signature. Such person shall be asked to present one of the
45 forms of identification specified in subsection B of § 24.2-643. The officers of election shall note on the
46 green envelope whether or not the voter has presented one of the specified forms of identification. The
47 officers of election shall enter the appropriate information for the person in the precinct provisional ballots
48 log in accordance with the instructions of the State Board but shall not enter a consecutive number for the
49 voter on the pollbook nor otherwise mark his name as having voted. ~~The officers of election shall provide~~
50 ~~an application for registration to the person offering to vote in the manner provided in this section.~~

51 The voter shall then, in the presence of an officer of election, but in a secret manner, mark the
52 printed ballot as provided in § 24.2-644 and seal it in the green envelope. The envelope containing the
53 ballot shall then promptly be placed in the ballot container by an officer of election.

54 B. An officer of election, by a written notice given to the voter, shall ~~(i)~~ inform him that a
55 determination of his right to vote shall be made by the electoral board, ~~(ii)~~ and advise the voter of the
56 beginning time and place for the board's meeting and of the voter's right to be present at that meeting, ~~and~~
57 ~~(iii) inform a. If the~~ voter is voting provisionally ~~when as~~ required by § 24.2-643, an officer of election,
58 by written notice given to the voter, shall also inform him that he may submit a copy of one of the forms
59 of identification specified in subsection B of § 24.2-643 to the electoral board by facsimile, electronic
60 mail, in-person submission, or timely United States Postal Service or commercial mail delivery, to be
61 received by the electoral board no later than noon on the third day after the election. ~~At the meeting, the~~
62 ~~voter may request an extension of the determination of the provisional vote in order to provide information~~
63 ~~to prove that the voter is entitled to vote in the precinct pursuant to § 24.2-401. The electoral board shall~~
64 ~~have the authority to grant such extensions which it deems reasonable to determine the status of a~~
65 ~~provisional vote.~~

66 B.-C. The provisional votes submitted pursuant to subsection A, in their unopened envelopes, shall
67 be sealed in a special envelope marked "Provisional Votes," inscribed with the number of envelopes
68 contained therein, and signed by the officers of election who counted them. All provisional votes
69 envelopes shall be delivered either (i) to the clerk of the circuit court who shall deliver all such envelopes
70 to the secretary of the electoral board or (ii) to the general registrar in localities in which the electoral
71 board has directed delivery of election materials to the general registrar pursuant to § 24.2-668.

72 ~~The electoral board shall meet on the day following the election and determine whether each~~
73 ~~person having submitted such a provisional vote was entitled to do so as a qualified voter in the precinct~~
74 ~~in which he offered the provisional vote. If the board is unable to determine the validity of all the~~
75 ~~provisional ballots offered in the election, or has granted any voter who has offered a provisional ballot~~
76 ~~an extension as provided in subsection A, the meeting shall stand adjourned, not to exceed seven calendar~~

77 ~~days from the date of the election, until the board has determined the validity of all provisional ballots~~
78 ~~offered in the election.~~

79 ~~One authorized representative of each political party or independent candidate in a general or~~
80 ~~special election or one authorized representative of each candidate in a primary election shall be permitted~~
81 ~~to remain in the room in which the determination is being made as an observer so long as he does not~~
82 ~~participate in the proceedings and does not impede the orderly conduct of the determination. Each~~
83 ~~authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each~~
84 ~~representative, who is not himself a candidate or party chairman, shall present to the electoral board a~~
85 ~~written statement designating him to be a representative of the party or candidate and signed by the county~~
86 ~~or city chairman of his political party, the independent candidate, or the primary candidate, as appropriate.~~
87 ~~If the county or city chairman is unavailable to sign such a written designation, such a designation may be~~
88 ~~made by the state or district chairman of the political party. However, no written designation made by a~~
89 ~~state or district chairman shall take precedence over a written designation made by the county or city~~
90 ~~chairman. Such statement, bearing the chairman's or candidate's original signature, may be photocopied~~
91 ~~and such photocopy shall be as valid as if the copy had been signed.~~

92 ~~Notwithstanding the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.),~~
93 ~~attendance at meetings of the electoral board to determine the validity of provisional ballots shall be~~
94 ~~permitted only for the authorized representatives provided for in this subsection, for the persons whose~~
95 ~~provisional votes are being considered and their representative or legal counsel, and for appropriate staff~~
96 ~~and legal counsel for the electoral board.~~

97 ~~If the electoral board determines that such person was not entitled to vote as a qualified voter in~~
98 ~~the precinct in which he offered the provisional vote, is unable to determine his right to vote, or has not~~
99 ~~been provided one of the forms of identification specified in subsection B of § 24.2-643, the envelope~~
100 ~~containing his ballot shall not be opened and his vote shall not be counted. The provisional vote shall be~~
101 ~~counted if (a) such person is entitled to vote in the precinct pursuant to § 24.2-401 or (b) the Department~~
102 ~~of Elections or the voter presents proof that indicates the voter submitted an application for registration to~~
103 ~~the Department of Motor Vehicles or other state-designated voter registration agency prior to the close of~~

104 ~~registration pursuant to § 24.2-416 and the registrar determines that the person was qualified for~~
105 ~~registration based upon the application for registration submitted by the person pursuant to subsection A.~~
106 ~~The general registrar shall notify in writing pursuant to § 24.2-114 those persons found not properly~~
107 ~~registered or whose provisional vote was not counted.~~

108 ~~If the electoral board determines that such person was entitled to vote, the name of the voter shall~~
109 ~~be entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and~~
110 ~~the ballot placed in a ballot container without any inspection further than that provided for in § 24.2-646.~~

111 ~~On completion of its determination, the electoral board shall proceed to count such ballots and~~
112 ~~certify the results of its count. Its certified results shall be added to those found pursuant to § 24.2-671.~~
113 ~~No adjustment shall be made to the statement of results for the precinct in which the person offered to~~
114 ~~vote. However, any voter who cast a provisional ballot and is determined by the electoral board to have~~
115 ~~been entitled to vote shall have his name included on the list of persons who voted that is submitted to the~~
116 ~~Department of Elections pursuant to § 24.2-406.~~

117 ~~The certification of the results of the count together with all ballots and envelopes, whether open~~
118 ~~or unopened, and other related material shall be delivered by the electoral board to the clerk of the circuit~~
119 ~~court and retained by him as provided for in §§ 24.2-668 and 24.2-669.~~

120 ~~C. Whenever the polling hours are extended by an order of a court of competent jurisdiction, any~~
121 ~~ballots marked after the normal polling hours by persons who were not already in line at the time the polls~~
122 ~~would have closed, notwithstanding the court order, shall be treated as provisional ballots under this~~
123 ~~section. The officers of election shall mark the green envelope for each such provisional ballot to indicate~~
124 ~~that it was cast after normal polling hours due to the court order, and when preparing the materials to~~
125 ~~deliver to the registrar or electoral board, shall separate these provisional ballots from any provisional~~
126 ~~ballots used for any other reason. The electoral board shall treat these provisional ballots as provided in~~
127 ~~subsection B; however, the counted and uncounted provisional ballots marked after the normal polling~~
128 ~~hours shall be kept separate from all other ballots and recorded in a separate provisional ballots pollbook.~~
129 ~~The Department of Elections shall provide instructions to the electoral boards for the handling and~~
130 ~~counting of such provisional ballots pursuant to this section.~~

131 **§ 24.2-653.01. Provisional ballots; electoral boards to make determination as to validity.**

132 A. The electoral board shall meet on the day following the election and determine whether each
133 person having submitted a provisional vote pursuant to § 24.2-653 was entitled to do so as a qualified
134 voter in the precinct in which he offered the provisional vote. At the meeting, the voter may request an
135 extension of the determination of the provisional vote in order to provide information to prove that the
136 voter is entitled to vote in the precinct pursuant to § 24.2-401. The electoral board shall have the authority
137 to grant such extensions that it deems reasonable to determine the status of a provisional vote.

138 If the board is unable to determine the validity of all the provisional ballots offered in the election,
139 or has granted any voter who has offered a provisional ballot an extension, the meeting shall stand
140 adjourned, not to exceed seven calendar days from the date of the election, until the board has determined
141 the validity of all provisional ballots offered in the election.

142 B. The electoral board shall permit one authorized representative of each political party or
143 independent candidate in a general or special election or one authorized representative of each candidate
144 in a primary election to remain in the room in which the determination is being made as an observer so
145 long as he does not participate in the proceedings and does not impede the orderly conduct of the
146 determination. Each authorized representative shall be a qualified voter of any jurisdiction of the
147 Commonwealth. Each representative, who is not himself a candidate or party chairman, shall present to
148 the electoral board a written statement designating him to be a representative of the party or candidate and
149 signed by the county or city chairman of his political party, the independent candidate, or the primary
150 candidate, as appropriate. If the county or city chairman is unavailable to sign such a written designation,
151 such a designation may be made by the state or district chairman of the political party. However, no written
152 designation made by a state or district chairman shall take precedence over a written designation made by
153 the county or city chairman. Such statement, bearing the chairman's or candidate's original signature, may
154 be photocopied and such photocopy shall be as valid as if the copy had been signed.

155 Notwithstanding the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.),
156 attendance at meetings of the electoral board to determine the validity of provisional ballots shall be
157 permitted only for the authorized representatives provided for in this subsection, for the persons whose

158 provisional votes are being considered and their representative or legal counsel, and for appropriate staff
159 and legal counsel for the electoral board.

160 C. If the electoral board determines that such person was not entitled to vote as a qualified voter
161 in the precinct in which he offered the provisional vote, is unable to determine his right to vote, or has not
162 been provided one of the forms of identification specified in subsection B of § 24.2-643, the envelope
163 containing his ballot shall not be opened and his vote shall not be counted. The general registrar shall
164 notify in writing pursuant to § 24.2-114 those persons found not properly registered or whose provisional
165 vote was not counted.

166 The provisional vote shall be counted if (i) such person is entitled to vote in the precinct pursuant
167 to § 24.2-401 or (ii) the Department of Elections or the voter presents proof that indicates the voter
168 submitted an application for registration to the Department of Motor Vehicles or other state-designated
169 voter registration agency prior to the close of registration pursuant to § 24.2-416 and the registrar
170 determines that the person was qualified for registration based upon the application for registration
171 submitted by the person pursuant to subsection B of § 24.2-652.

172 If the electoral board determines that such person was entitled to vote, the name of the voter shall
173 be entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and
174 the ballot shall be placed in a ballot container without any inspection further than that provided for in §
175 24.2-646.

176 D. On completion of its determination, the electoral board shall proceed to count such ballots and
177 certify the results of its count. Its certified results shall be added to those found pursuant to § 24.2-671.
178 No adjustment shall be made to the statement of results for the precinct in which the person offered to
179 vote. However, any voter who cast a provisional ballot and is determined by the electoral board to have
180 been entitled to vote shall have his name included on the list of persons who voted that is submitted to the
181 Department of Elections pursuant to § 24.2-406.

182 E. The certification of the results of the count together with all ballots and envelopes, whether
183 open or unopened, and other related material shall be delivered by the electoral board to the clerk of the
184 circuit court and retained by him as provided for in §§ 24.2-668 and 24.2-669.

185 **§ 24.2-653.1. Voters who did not receive absentee ballots; provisional ballots.**

186 ~~A. The provisions of this section shall apply when (i) a~~ Any person who offers to vote pursuant to
187 § 24.2-643 at his proper polling place or at a central absentee voter precinct established by the governing
188 body of the county or city where he is registered to vote, ~~(ii) his~~ but whose name is shown on the pollbook
189 as having applied for an absentee ballot, ~~and (iii) shall be entitled to cast a provisional ballot if,~~ for any
190 reason, he did not receive or has lost the absentee ballot. In such case, he shall be ~~entitled to cast a~~
191 ~~provisional ballot after presenting~~ required to present to the officer of election a statement signed by him
192 that he did not receive the ballot or has lost the ballot, subject to felony penalties for making false
193 statements as pursuant to § 24.2-1016.

194 ~~B. Such person shall be, before being~~ given a printed ballot and ~~be~~ permitted to vote the provisional
195 ballot ~~in accordance with the provisions of § 24.2-653 and the instructions of the State Board.~~ The electoral
196 board shall process the ballot in accordance with the provisions of ~~§ 24.2-653~~ § 24.2-653.01 and the
197 instructions of the State Board.

198 **§ 24.2-653.2. Ballots cast after normal close of polling hours due to court-ordered extension;**
199 **provisional ballots.**

200 ~~Whenever the polling hours are extended by an order of a court of competent jurisdiction, any~~
201 ~~ballots marked after the normal polling hours by persons who were not already in line at the time the polls~~
202 ~~would have closed, notwithstanding the court order, shall be treated as provisional ballots under this~~
203 ~~section. The officers of election shall mark the green envelope for each such provisional ballot to indicate~~
204 ~~that it was cast after normal polling hours due to the court order, and when preparing the materials to~~
205 ~~deliver to the registrar or electoral board, shall separate these provisional ballots from any provisional~~
206 ~~ballots used for any other reason. The electoral board shall treat these provisional ballots as provided in §~~
207 ~~24.2-653.01; however, the counted and uncounted provisional ballots marked after the normal polling~~
208 ~~hours shall be kept separate from all other ballots and recorded in a separate provisional ballots pollbook.~~
209 ~~The Department of Elections shall provide instructions to the electoral boards for the handling and~~
210 ~~counting of such provisional ballots pursuant to this section.~~

211 **§ 24.2-701. Application for absentee ballot.**

212 A. The State Board shall furnish each general registrar with a sufficient number of applications for
213 official absentee ballots. The registrars shall furnish applications to persons requesting them.

214 The State Board shall implement a system that enables eligible persons to request and receive an
215 absentee ballot application electronically through the Internet. Electronic absentee ballot applications shall
216 be in a form approved by the State Board.

217 Except as provided in § 24.2-703, a separate application shall be completed for each election in
218 which the applicant offers to vote. An application for an absentee ballot may be accepted the later of (i)
219 12 months before an election or (ii) the day following any election held in the twelfth month prior to the
220 election in which the applicant is applying to vote.

221 An application that is completed in person at the same time that the applicant registers to vote shall
222 be held and processed no sooner than the fifth day after the date that the applicant registered to vote;
223 however, this requirement shall not be applicable to any person who is qualified to vote absentee under
224 subdivision A 2 of § 24.2-700.

225 Any application received before the ballots are printed shall be held and processed as soon as the
226 printed ballots for the election are available.

227 For the purposes of this chapter, the general registrar's office shall be open a minimum of eight
228 hours between the hours of 8:00 a.m. and 5:00 p.m. on the first and second Saturday immediately
229 preceding all elections.

230 Unless the applicant is disabled, all applications for absentee ballots shall be signed by the
231 applicant who shall state, subject to felony penalties for making false statements pursuant to § 24.2-1016,
232 that to the best of his knowledge and belief the facts contained in the application are true and correct and
233 that he has not and will not vote in the election at any other place in Virginia or in any other state. If the
234 applicant is unable to sign the application, a person assisting the applicant will note this fact on the
235 applicant signature line and provide his signature, name, and address.

236 B. Applications for absentee ballots shall be completed in the following manner:

237 1. An application completed in person shall be completed only in the office of the general registrar
238 and signed by the applicant in the presence of a registrar. The applicant shall provide one of the forms of

239 identification specified in subsection B of § 24.2-643. Any applicant who does not show one of the forms
240 of identification specified in subsection B of § 24.2-643 shall be offered a provisional ballot under the
241 provisions of § 24.2-653. The State Board of Elections shall provide instructions to the general registrar
242 for the handling and counting of such provisional ballots pursuant to ~~subsection B of § 24.2-653~~ § 24.2-
243 653.01 and this section.

244 2. Any other application may be made by mail, electronic or telephonic transmission to a facsimile
245 device if one is available to the office of the general registrar or the office of the State Board if a device is
246 not available locally, or other means. The application shall be on a form furnished by the registrar or, if
247 made under subdivision A 2 of § 24.2-700, may be on a federal postcard application prescribed pursuant
248 to 52 U.S.C. § 20301(b)(2). The federal postcard application may be accepted the later of (i) 12 months
249 before an election or (ii) the day following any election held in the twelfth month prior to the election in
250 which the applicant is applying to vote. The application shall be made to the appropriate registrar no later
251 than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote.

252 C. Applications for absentee ballots shall contain the following information:

253 1. The applicant's printed name, the last four digits of the applicant's social security number, and
254 the reason the applicant will be absent or cannot vote at his polling place on the day of the election.
255 However, an applicant completing the application in person shall not be required to provide the last four
256 digits of his social security number;

257 2. A statement that he is registered in the county or city in which he offers to vote and his residence
258 address in such county or city. Any person temporarily residing outside the United States shall provide
259 the last date of residency at his Virginia residence address, if that residence is no longer available to him.
260 Any person who makes application under subdivision A 2 of § 24.2-700 who is not a registered voter may
261 file the applications to register and for a ballot simultaneously;

262 3. The complete address to which the ballot is to be sent directly to the applicant, unless the
263 application is made in person at a time when the printed ballots for the election are available and the
264 applicant chooses to vote in person at the time of completing his application. The address given shall be
265 (i) the address of the applicant on file in the registration records; (ii) the address at which he will be located

266 while absent from his county or city; or (iii) the address at which he will be located while temporarily
267 confined due to a disability or illness. No ballot shall be sent to, or in care of, any other person; and

268 4. In the case of a person, or the spouse or dependent of a person, who is on active duty as a
269 member of the uniformed services as defined in § 24.2-452, the branch of service to which he or the spouse
270 belongs; or

271 5. In the case of a student, or the spouse of a student, who is attending a school or institution of
272 higher education, the name of the school or institution of higher education; or

273 6. In the case of any duly registered person with a disability, as defined in § 24.2-101, who is
274 unable to go in person to the polls on the day of the election because of his disability, illness, or pregnancy,
275 that he is a person with a disability, illness, or pregnancy; or

276 7. In the case of a person who is confined awaiting trial or for having been convicted of a
277 misdemeanor, the name of the institution of confinement; or

278 8. In the case of a person who will be absent on election day for business reasons, the name of his
279 employer or business; or

280 9. In the case of a person who will be absent on election day for personal business or vacation
281 reasons, the name of the county or city in Virginia or the state or country to which he is traveling; or

282 10. In the case of a person who is unable to go to the polls on the day of election because he is
283 primarily and personally responsible for the care of an ill or disabled family member who is confined at
284 home, his relationship to the family member; or

285 11. In the case of a person who is unable to go to the polls on the day of election because of an
286 obligation occasioned by his religion, that he has an obligation occasioned by his religion; or

287 12. In the case of a person who, in the regular and orderly course of his business, profession, or
288 occupation, will be at his place of work and commuting to and from his home to his place of work for 11
289 or more hours of the 13 hours that the polls are open pursuant to § 24.2-603, the name of his business or
290 employer and hours he will be at the workplace and commuting on election day; or

291 13. In the case of a law-enforcement officer, as defined in § 18.2-51.1; firefighter, as defined in §
292 65.2-102; volunteer firefighter, as defined in § 27-42; search and rescue personnel, as defined in § 18.2-
293 51.1; or emergency medical services personnel, as defined in § 32.1-111.1, that he is a first responder; or

294 14. In the case of a person who has been designated by a political party, independent candidate, or
295 candidate in a primary election to be a representative of the party or candidate inside a polling place on
296 the day of the election pursuant to subsection C of § 24.2-604 and § 24.2-639, the fact that he is so
297 designated; or

298 15. In the case of a person who has been granted a protective order issued by or under the authority
299 of any court of competent jurisdiction, the name of the county or city in Virginia or the state of the issuing
300 court.

301 D. An application shall not be required for any registered voter appearing in person to cast an
302 absentee ballot during the period beginning on the second Saturday immediately preceding the election in
303 which he is offering to vote.

304 **§ 24.2-701.1. Absentee voting in person.**

305 A. Absentee voting in person shall be available on the forty-fifth day prior to any election and shall
306 continue until 5:00 p.m. on the Saturday immediately preceding the election.

307 1. Any registered voter eligible to vote absentee pursuant to subsection A of § 24.2-700 may vote
308 absentee in person beginning on the forty-fifth day prior to the election in which he is offering to vote and
309 continuing until the second Friday immediately preceding such election. He shall complete the application
310 for an absentee ballot required by § 24.2-701, and the general registrar shall process that application in
311 accordance with the provisions of § 24.2-706.

312 2. Any registered voter may vote absentee in person on or after the second Saturday immediately
313 preceding the election in which he is offering to vote. He shall provide his name and his residence address
314 in the county or city in which he is offering to vote. After verifying that the voter is a registered voter of
315 that county or city, the general registrar shall enroll the voter's name and address on the absentee voter
316 applicant list maintained pursuant to § 24.2-706.

317 A registered voter voting by absentee ballot in person shall provide one of the forms of
318 identification specified in subsection B of § 24.2-643. If he does not show one of the forms of identification
319 specified in subsection B of § 24.2-643, he shall be offered a provisional ballot under the provisions of §
320 24.2-653. The State Board shall provide instructions to the general registrar for the handling and counting
321 of such provisional ballots pursuant to ~~subsection B of § 24.2-653~~ § 24.2-653.01 and this section.

322 B. Absentee voting in person shall be available during regular business hours. The electoral board
323 of each county and city shall provide for absentee voting in person in the office of the general registrar.
324 For purposes of this chapter, such office shall be open a minimum of eight hours between the hours of
325 8:00 a.m. and 5:00 p.m. on the first and second Saturday immediately preceding all elections. Any
326 applicant who is in line to cast his ballot when the office of the general registrar or location being used for
327 in-person absentee voting closes shall be permitted to cast his absentee ballot that day.

328 C. Additional locations in the county or city approved by the electoral boards may be available for
329 absentee voting in person. Any such location shall be in a public building owned or leased by the county,
330 city, or town within the county and may be in a facility that is owned or leased by the Commonwealth and
331 used as a location for Department of Motor Vehicles facilities or as an office of the general registrar. Any
332 such location shall have adequate facilities for the protection of all elections materials produced in the
333 process of absentee voting in person, the voted and unvoted absentee ballots, and any voting systems in
334 use at the location.

335 D. The general registrar may provide for the casting of absentee ballots in person pursuant to this
336 section on voting systems. The Department shall prescribe the procedures for use of voting systems. The
337 procedures shall provide for absentee voting in person on voting systems that have been certified and are
338 currently approved by the State Board. The procedures shall be applicable and uniformly applied by the
339 Department to all localities using comparable voting systems.

340 E. At least two officers of election shall be present during all hours that absentee voting in person
341 is available and shall represent the two major political parties, except in the case of a party primary, when
342 they may represent the party conducting the primary. However, such requirement shall not apply when (i)

343 voting systems that are being used pursuant to subsection D are located in the office of the general registrar
344 and (ii) the general registrar or an assistant registrar is present.

345 F. The Department shall include absentee ballots voted in person in its instructions for the
346 preparation, maintenance, and reporting of ballots, pollbooks, records, and returns.

347 **§ 24.2-706. Duty of general registrar on receipt of application; statement of voter.**

348 A. On receipt of an application for an absentee ballot, the general registrar shall enroll the name
349 and address of each registered applicant on an absentee voter applicant list that shall be maintained in the
350 office of the general registrar with a file of the applications received. The list shall be available for
351 inspection and copying and the applications shall be available for inspection only by any registered voter
352 during regular office hours. Upon request and for a reasonable fee, the Department of Elections shall
353 provide an electronic copy of the absentee voter applicant list to any political party or candidate. Such list
354 shall be used only for campaign and political purposes. Any list made available for inspection and copying
355 under this section shall contain the post office box address in lieu of the residence street address for any
356 individual who has furnished at the time of registration or subsequently, in addition to his street address,
357 a post office box address pursuant to subsection B of § 24.2-418.

358 No list or application containing an individual's social security number, or any part thereof, or the
359 individual's day and month of birth, shall be made available for inspection or copying by anyone. The
360 Department of Elections shall prescribe procedures for general registrars to make the information in the
361 lists and applications available in a manner that does not reveal social security numbers or parts thereof,
362 or an individual's day and month of birth.

363 B. The completion and timely delivery of an application for an absentee ballot shall be construed
364 to be an offer by the applicant to vote in the election.

365 The general registrar shall note on each application received whether the applicant is or is not a
366 registered voter. In reviewing the application for an absentee ballot, the general registrar shall not reject
367 the application of any individual because of an error or omission on any record or paper relating to the
368 application, if such error or omission is not material in determining whether such individual is qualified
369 to vote absentee.

370 If the application has been properly completed and signed and the applicant is a registered voter
371 of the precinct in which he offers to vote, the general registrar shall, at the time when the printed ballots
372 for the election are available, send by the deadline set out in § 24.2-612, obtaining a certificate or other
373 evidence of either first-class or expedited mailing or delivery from the United States Postal Service or
374 other commercial delivery provider, or deliver to him in person in the office of the registrar, the following
375 items and nothing else:

376 1. An envelope containing the folded ballot, sealed and marked "Ballot within. Do not open except
377 in presence of a witness."

378 2. An envelope, with printing only on the flap side, for resealing the marked ballot, on which
379 envelope is printed the following:

380 "Statement of Voter."

381 "I do hereby state, subject to felony penalties for making false statements pursuant to § 24.2-1016,
382 that my FULL NAME is _____ (last, first, middle); that I am now or have been at some time since last
383 November's general election a legal resident of _____ (STATE YOUR LEGAL RESIDENCE IN
384 VIRGINIA including the house number, street name or rural route address, city, zip code); that I received
385 the enclosed ballot(s) upon application to the registrar of such county or city; that I opened the envelope
386 marked 'ballot within' and marked the ballot(s) in the presence of the witness, without assistance or
387 knowledge on the part of anyone as to the manner in which I marked it (or I am returning the form required
388 to report how I was assisted); that I then sealed the ballot(s) in this envelope; and that I have not voted and
389 will not vote in this election at any other time or place.

390 Signature of Voter _____

391 Date _____

392 Signature of witness _____"

393 For elections held after January 1, 2004, instead of the envelope containing the above oath, an
394 envelope containing the standard oath prescribed by the presidential designee under § 101(b)(7) of the
395 Uniformed and Overseas Citizens Absentee Voting Act (52 U.S.C. § 20301 et seq.) shall be sent to voters
396 who are qualified to vote absentee under that Act.

397 When this statement has been properly completed and signed by the registered voter and witnessed,
398 his ballot shall not be subject to challenge pursuant to § 24.2-651.

399 3. A properly addressed envelope for the return of the ballot to the general registrar by mail or by
400 the applicant in person.

401 4. Printed instructions for completing the ballot and statement on the envelope and returning the
402 ballot.

403 For federal elections held after January 1, 2004, for any voter who is required by subparagraph (b)
404 of 52 U.S.C. § 21083 of the Help America Vote Act of 2002 to show identification the first time the voter
405 votes in a federal election in the state, the printed instructions shall direct the voter to submit with his
406 ballot (i) a copy of a current and valid photo identification or (ii) a copy of a current utility bill, bank
407 statement, government check, paycheck or other government document that shows the name and address
408 of the voter. Such individual who desires to vote by mail but who does not submit one of the forms of
409 identification specified in this paragraph may cast such ballot by mail and the ballot shall be counted as a
410 provisional ballot under the provisions of § ~~24.2-653~~ 24.2-653.01. The Department of Elections shall
411 provide instructions to the electoral boards for the handling and counting of such provisional ballots
412 pursuant to ~~subsection B of § 24.2-653~~ § 24.2-653.01 and this section.

413 5. For any voter entitled to vote absentee under the Uniformed and Overseas Citizens Absentee
414 Voting Act (52 U.S.C. § 20301 et seq.), information provided by the Department of Elections specific to
415 the voting rights and responsibilities for such citizens, or information provided by the registrar specific to
416 the status of the voter registration and absentee ballot application of such voter, may be included.

417 The envelopes and instructions shall be in the form prescribed by the Department of Elections.

418 C. If the applicant completes his application in person under § 24.2-701 at a time when the printed
419 ballots for the election are available, he may request that the general registrar send to him by mail the
420 items set forth in subdivisions B 1 through 4, instead of casting the ballot in person. Such request shall be
421 made no later than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote,
422 and the general registrar shall send those items to the applicant by mail, obtaining a certificate or other
423 evidence of mailing.

424 D. If the applicant states as the reason for his absence on election day any of the reasons set forth
425 in subdivision A 2 of § 24.2-700, the general registrar, at the time when the printed ballots for the election
426 are available, shall mail by the deadline set forth in § 24.2-612 or deliver in person to the applicant in the
427 office of the general registrar the items as set forth in subdivisions B 1 through 4 and, if necessary, an
428 application for registration. A certificate or other evidence of mailing shall not be required. If the applicant
429 requests that such items be sent by electronic transmission, the general registrar, at the time when the
430 printed ballots for the election are available but not later than the deadline set forth in § 24.2-612, shall
431 send by electronic transmission the blank ballot, the form for the envelope for returning the marked ballot,
432 and instructions to the voter. Such materials shall be sent using the official email address or fax number
433 of the office of the general registrar published on the Department of Elections website. The State Board
434 of Elections may prescribe by regulation the format of the email address used for transmitting ballots to
435 eligible voters. A general registrar may also use electronic transmission facilities provided by the Federal
436 Voting Assistance Program. The voted ballot shall be returned to the general registrar as otherwise
437 required by this chapter.

438 E. The circuit courts shall have jurisdiction to issue an injunction to enforce the provisions of this
439 section upon the application of (i) any aggrieved voter, (ii) any candidate in an election district in whole
440 or in part in the court's jurisdiction where a violation of this section has occurred, or is likely to occur, or
441 (iii) the campaign committee or the appropriate district political party chairman of such candidate. Any
442 person who fails to discharge his duty as provided in this section through willful neglect of duty and with
443 malicious intent shall be guilty of a Class 1 misdemeanor as provided in subsection A of § 24.2-1001.

444 **§ 24.2-710. Further duties of electoral board and general registrar; absentee voter applicant**
445 **lists.**

446 On receipt of an absentee ballot, the electoral board or general registrar shall mark the date of
447 receipt in the appropriate column opposite the name and address of the voter on the absentee voter
448 applicant list maintained in the general registrar's office. A board member or registrar shall deposit the
449 return envelope and the unopened ballot envelope in an appropriate container provided for the purpose, in

450 which they shall remain until the day of the election, unless the registrar opts to open sealed ballot
451 envelopes in order to expedite the counting of absentee ballots in accordance with § 24.2-709.1.

452 On the day before the election, the general registrar shall (i) make out in triplicate on a form
453 prescribed by the State Board the absentee voter applicant list containing the names of all persons who
454 applied for an absentee ballot through the third day before the election and (ii) by noon on the day before
455 the election, deliver two copies of the list to the electoral board. The general registrar shall make out a
456 supplementary list containing the names of all persons voting absentee in person pursuant to §§ 24.2-705.1
457 and 24.2-705.2, or applying to vote absentee pursuant to § 24.2-705, for delivery by 5:00 p.m. on the day
458 before the election. The supplementary list shall be deemed part of the absentee voter applicant list and
459 shall be prepared and delivered in accordance with the instructions of the State Board. The general
460 registrar shall maintain one copy of the list in his office for two years as a public record open for inspection
461 upon request during regular office hours.

462 On the day before the election, the electoral board shall deliver one copy of the list provided to it
463 by the general registrar to the chief officer of election for each precinct. The list shall be attested by the
464 secretary of the electoral board who shall be responsible for the delivery of the attested lists to the chief
465 officer of election for each precinct.

466 Absentee ballots shall be accepted only from voters whose names appear on the attested list.

467 Before the polls close on the day of the election, the electoral board shall deliver the absentee ballot
468 containers to, and obtain a receipt from, the officers of election at each appropriate precinct. Any ballot
469 returned to the electoral board or general registrar prior to the closing of the polls, but after the ballot
470 container has been delivered, shall be delivered in an appropriate container to the officers of election at
471 each appropriate precinct. The containers shall be sealed prior to delivery to the officers and shall contain
472 the sealed absentee ballots, the accompanying return envelopes, and a copy of the absentee voter applicant
473 list for each precinct.

474 If the county or city uses a central absentee voter precinct pursuant to § 24.2-712, the lists and
475 containers shall be delivered, as provided in this section, to the officers of election for the absentee
476 precinct.

477 Before noon on the day following the election, the general registrar shall deliver all applications
478 for absentee ballots for the election, under seal, to the clerk of the circuit court for the county or city,
479 except that the general registrar may retain all applications for absentee ballots until the electoral board
480 has ascertained the results of the election pursuant to § 24.2-671, and has determined the validity of and
481 counted all provisional ballots pursuant to § ~~24.2-653~~ 24.2-653.01, at which point all applications shall
482 then be delivered, under seal, to the clerk of the circuit court for the county or city. The clerk shall retain
483 the sealed applications with the counted ballots.

484 The secretary of the electoral board shall deliver all absentee ballots received after the election to
485 the clerk of the circuit court.

486 Upon request, the State Board shall provide an electronic copy of the absentee voter applicant list
487 to any political party or candidate. Such lists shall be used only for campaign and political purposes. In
488 no event shall any list furnished under this section contain ~~(i)~~ (a) any voter's social security number or any
489 part thereof, ~~(ii)~~ (b) any voter's day and month of birth, or ~~(iii)~~ (c) the residence address of any voter who
490 has provided a post office box address to be used on public lists pursuant to § 24.2-418.

491 #

Title 45.1 Recodification: Outline
8/9/2019

Underlined text indicates proposed chapter or article number.

Subtitle I. Administration.

Ch. 1. Chapter 14.1 Administration (§§ 45.1-161.1 through 45.1-161.6)
7 sections.

Ch. 2. Chapter 25 Division of Geology and Mineral Resources (§§ 45.1-383 through 45.1-389)
7 sections.

Ch. 3. Chapter 20 Interstate Mining Compact (§ 45.1-271) (covers both coal and non-coal)
1 section.

Ch. 4. Chapter 24 Interstate Compact to Conserve Oil and Gas (§§ 45.1-381 through 45.1-382)
2 sections.

Subtitle II. Coal Mines.

Part A. Coal Mines Generally.

Ch. 5. Chapter 14.2 Coal Mine Safety Act (§§ 45.1-161.7 through 45.1-161.104)
10 articles containing 81 sections.

Ch. 6. Coal Mining Property, Interests, Adjacent Owners, and Dams.

Article 1. Chapter 14.7 Rights of Owners of Land Adjacent to Coal Mines (§§ 45.1-161.310 through 45.1-161.311)
2 sections.

Article 2. Chapter 14.7:2 Trust for Coal Interests (§§ 45.1-161.311:3 through 45.1-161.311:8)
2 articles containing 6 sections.

Article 3. Chapter 14.8 Emergency Seizure of Coal Properties by Commonwealth (§§ 45.1-161.312 through 45.1-161.322)
11 sections.

Article 4. Chapter 18 Coal Mining Refuse Piles, Water and Silt Retaining Dams (§§ 45.1-221 through 45.1-225)
4 sections.

Part B. Underground Coal Mines.

Ch. 7. Chapter 14.3 [first half] Requirements Applicable to Underground Coal Mines (§§ 45.1-161.105 through 45.1-161.173)
9 articles containing 66 sections.

Ch. 8. Chapter 14.3 [second half] Requirements Applicable to Underground Coal Mines (§§ 45.1-161.174 through 45.1-161.252)
7 articles containing 75 sections.

Title 45.1 Recodification: Outline
8/9/2019

Part C. Surface Coal Mines.

Ch. 9. Chapter 14.4 Requirements Applicable to Surface Coal Mines (§§ 45.1-161.253 through 45.1-161.292)

13 articles containing 40 sections

Ch. 10. 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.

Subtitle III. Mineral Mines.

Part A. Mineral Mines Generally.

Ch. 11. Chapter 14.4:1 Mineral Mine Safety Act (§§ 45.1-161.292:1 through 45.1-161.292:73)

9 articles containing 69 sections.

Ch. 12. 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.

Ch. 13. Mineral Mining Dams and Adjacent Owners.

Article 1. Chapter 18.1 Mineral Mining Refuse Piles, Water and Silt Retaining Dams (§§ 45.1-225.1 through 45.1-225.3)

3 sections.

Article 2. 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.

Part B. Underground Mineral Mines.

Ch. 14. Chapter 14.5 Requirements Applicable to Underground Mineral Mines (§§ 45.1-161.293 through 45.1-161.303)

11 sections.

Part C. Surface Mineral Mines.

Ch. 15. Chapter 14.6 Requirements Applicable to Surface Mineral Mining (§§ 45.1-161.304 through 45.1-161.309)

6 sections.

Subtitle IV. Oil and Gas.

Ch. 16. Chapter 22.1 The Virginia Gas and Oil Act (§§ 45.1-361.1 through 45.1-361.44)

4 articles containing 47 sections.

Ch. 17. Title 67 Chapter 3 Offshore Energy Resources (§§ 67-300 through 67-301)

2 sections: royalties from offshore; put wind in Subtitle V.

Title 45.1 Recodification: Outline
8/9/2019

Subtitle V. Other Sources of Energy; Energy Policy.

Ch. 18. Energy Generally.

Chapter 26 Energy Division, Etc. (§§ 45.1-390 through 45.1-394)

2 sections: all forms of energy.

Title 67 Ch. 1 Energy Policy of the Commonwealth (§§ 67-100 to 67-103)

4 sections: energy policy, objectives, etc., some renewable

Title 67 Chapter 2 Virginia Energy Plan (§§ 67-200 through 67-203)

5 sections: DMME Div. of Energy develop plan, reporting by utilities

Title 67 Ch. 6 Va. Coastal Energy Research Consortium (§§ 67-600 to 604)

5 sections, university group studies waves, wind, oil and gas.

Title 67 Ch. 9 Renewable Electricity Production Grant Prog. (67-900 to 903)

2 sections: Dept. grant to corp. for renewable electricity production.

Should be in Title 56 but for DMME involvement.

Title 67 Ch. 10 Solar and Wind Energy System Acquisition Grant Program

(§§ 67-1000 through 67-1003). Contingent effective date.

4 sections: DMME fund to indiv. or corp. to buy solar/wind infra.

Ch. 19. Wind Energy.

Title 67 Chapter 3 subsection C of § 67-300 wind energy

1 subsection

Title 67 Chapter 12 Virginia Offshore Wind Development Authority

(§§ 67-1200 through 67-1211)

12 sections: Political subdivision. DMME assist, Director is head.

Ch. 20. Solar Energy.

Title 67 Ch. 15 Virginia Solar Energy Development and Energy Storage Auth.

(§§ 67-1500 through 67-1509)

10 sections

Ch. 21. Geothermal Energy.

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

2 articles containing 11 sections.

Ch. 22. Nuclear Energy.

Title 67 Chapter 14 Virginia Nuclear Energy Consortium

(§§ 67-1400 through 67-1406)

7 sections: Authority (DMME and universities) establishes Consortium.

Ch. 23. Uranium Mining.

Title 45.1 Chapter 21 Exploration for Uranium Ore

(§§ 45.1-272 through 45.1-285.10)

24 sections.

Title 45.1 Recodification: Outline
8/9/2019

Portions of Title 67 that are not incorporated into Title 45.1:

Title 67 Chapter 4 Clean Coal Projects (§§ 67-400 through 67-402)

3 sections, one of which is expired. Air Pollution Control Board.

→ Move to a new article in Chapter 13 of Title 10.1.

Title 67 Chapter 5 Biodiesel Fuel (§§ 67-500 through 67-501)

2 sections, exclusively Commonwealth Transportation Board policy.

→ Move to Title 58.1?

Title 67 Chapter 7 Covenants Restricting Solar Energy Collection Devices

(§§ 67-700 through 67-701)

2 sections: HOAs, solar energy collection, disclosure to buyer.

→ Move to Title 55.1.

Title 67 Chapter 8 Motor Vehicle Fuel Efficiency Standards

(§§ 67-800 through 67-801)

2 sections: Support CAFE standards, market incentives - corporate vehicles.

→ Move to Title 10.1, Title 33.2, or elsewhere.

Title 67 Chapter 11 Renewable Energy Co-Location of Distribution Facilities

(§§ 67-1100 through 67-1110). Contingent effective date.

11 sections: locating electrical generation facilities, place lines in ROW; SCC.

→ Move to Title 56.

Expired chapter

Title 67 Chapter 13 Voluntary Solar Resource Development Fund [Expired] (§ 67-1300)

1 section, expired

1 SUBTITLE II.

2 COAL MINING.

3 **Drafting note: Proposed Subtitle II is created to logically organize provisions**
4 **relating to coal mining and is divided into proposed Parts A (Coal Mines Generally), B**
5 **(Underground Coal Mines), and C (Surface Coal Mines).**

6 PART A.

7 COAL MINES GENERALLY.

8 **Drafting note: Proposed Part A is created to logically organize provisions relating**
9 **to coal mines generally and contains two chapters: Chapter 5, Coal Mine Safety Act; and**
10 **Chapter 6, Coal Mining Property, Interests, Adjacent Owners, and Dams.**

11 CHAPTER-14.2 5.

12 COAL MINE SAFETY ACT.

13 **Drafting note: Existing Chapter 14.2, designated as the Coal Mine Safety Act, is**
14 **retained as proposed Chapter 5. This chapter is divided into 10 articles, as it currently**
15 **exists in Chapter 14.2.**

16 Article 1.

17 General Provisions.

18 **Drafting note: Existing Article 1, relating to general provisions, is retained.**

19 ~~§ 45.1-161.7. Short title.~~

20 ~~This chapter and Chapters 14.3 (§ 45.1-161.105 et seq.) and 14.4 (§ 45.1-161.253 et~~
21 ~~seq.) of this title shall be known as the "Coal Mine Safety Act."~~

22 **Drafting note: This section is deleted as unnecessary pursuant to § 1-244, which**
23 **states that throughout the Code the caption of a subtitle, chapter, or article serves as a**
24 **short title citation. Existing Chapters 14.3 and 14.4 continue to be incorporated into the**
25 **Coal Mine Safety Act through the definition of "Coal Mine Safety Act" in proposed §**
26 **45.2-xxx [existing § 45.1-161.8].**

27 ~~§ 45.1-161.8 45.2-xxx. Definitions.~~

28 As used in this chapter and in Chapters ~~14.3~~ 10 (§ ~~45.1-161.105~~ 45.2-xxx et seq.), 11 (§
29 45.2-xxx et seq.), and ~~14.4~~ 12 (§ ~~45.1-161.253~~ 45.2-xxx et seq.) ~~of this title~~, unless the context
30 requires a different meaning:

31 "Accident" means (i) a death of an individual at a mine; (ii) a serious personal injury;
32 (iii) an entrapment of an individual for more than 30 minutes; (iv) an unplanned inundation of
33 a mine by liquid or gas; (v) an unplanned ignition or explosion of gas or dust; (vi) an unplanned
34 fire not extinguished within 30 minutes of discovery; (vii) an unplanned ignition or explosion
35 of a blasting agent or an explosive; (viii) an unplanned roof fall at or above the anchorage zone
36 in active workings where roof bolts are in use; ₂ or an unplanned roof or rib fall in active
37 workings that impairs ventilation or impedes passage; (ix) a coal or rock outburst that causes
38 withdrawal of miners or ~~which that~~ disrupts regular mining activity for more than one hour; (x)
39 an unstable condition at an impoundment, refuse pile, or culm bank ~~which that~~ requires
40 emergency action in order to prevent failure; ~~or which that~~ causes individuals to evacuate an
41 area; ₂ or; failure of an impoundment, refuse pile, or culm bank; (xi) damage to hoisting
42 equipment in a shaft or slope ~~which that~~ endangers an individual or ~~which that~~ interferes with
43 use of the equipment for more than 30 minutes; (xii) an event at a mine ~~which that~~ causes death
44 or bodily injury to an individual not at a mine at the time the event occurs; and (xiii) the
45 unintentional fall of highwall that entraps equipment for more than 30 minutes.

46 "Active areas" means all places in a mine that are ventilated, if underground, and
47 examined regularly.

48 "Active workings" means any place in a mine where miners are normally required to
49 work or travel.

50 "Agent" means any person charged by the operator with responsibility for the operation
51 of all or a part of a mine or the supervision of the miners in a mine.

52 "Approved" means a device, apparatus, equipment, condition, method, course, ₂ or
53 practice approved in writing by the Chief or the Director.

54 "Authorized person" means a person assigned by the operator or agent to perform a
55 specific type of duty ~~or duties~~ or to be at a specific location ~~or locations~~ in the mine who is
56 trained and has demonstrated the ability to perform such duty ~~or duties~~ safely and effectively.

57 "Auxiliary fan" means a supplemental underground fan installed to increase the volume
58 of air to a specified location for the purpose of controlling dust, methane, or air quality.

59 "Cable" means a stranded conductor (single-conductor cable) or a combination of
60 conductors insulated from one another (multiple-conductor cable).

61 "Certified person" means a person ~~holding~~ who holds a valid certificate from the Board
62 of Coal Mining Examiners authorizing him to perform the task to which he is assigned.

63 "Circuit" means a conducting part or a system of conducting parts through which an
64 electric current is intended to flow.

65 "Circuit breaker" means a device for interrupting a circuit between separable contacts
66 under normal or abnormal conditions.

67 "Coal mine" means a surface coal mine or an underground coal mine.

68 "Coal Mine Safety Act" or "the Act" ~~shall mean~~ means this chapter and Chapters ~~14.3~~
69 10 (§ ~~45.1-161.105~~ 45.2-xxx et seq.), 11 (§ ~~45.2-xxx~~ et seq.), and ~~14.4~~ 12 (§ ~~45.1-161.253~~ 45.2-
70 xxx et seq.) ~~of this title, and shall include~~ includes any regulations ~~promulgated~~ adopted
71 thereunder, where applicable.

72 "Cross entry" means any entry or set of entries, turned from main entries, from which
73 room entries are turned.

74 "Experienced surface miner" means a person with ~~more than~~ or more of
75 experience working at a surface mine or the surface area of an underground coal mine.

76 "Experienced underground miner" means a person with ~~more than~~ or more
77 of underground coal mining experience.

78 "Federal mine safety law" means the Federal Mine Safety and Health Act of 1977 (P.L.
79 95-164), and regulations ~~promulgated~~ adopted thereunder.

80 "Fuse" means an overcurrent protective device with a circuit-opening fusible member
81 directly heated and destroyed by the passage of overcurrent through it.

82 "Ground" means a conducting connection between an electric circuit or equipment and
83 earth or to some conducting body ~~which~~ that serves in place of earth.

84 "Grounded" means connected to earth or to some connecting body ~~which~~ that serves in
85 place of ~~the~~ earth.

86 "Hazardous condition" means ~~conditions~~ a condition that ~~are~~ is likely to cause death or
87 serious personal injury to persons exposed to such ~~conditions~~ condition.

88 "Imminent danger" means the existence of any condition or practice in a mine ~~which~~
89 that could reasonably be expected to cause death or serious personal injury before such
90 condition or practice can be abated.

91 "Inactive mine" means a mine (i) at which (a) coal or minerals have not been excavated
92 or processed; or (b) work, other than examinations by a certified person or emergency work to
93 preserve the mine, has not been performed for a period of 30 days at an underground coal mine
94 ~~for a period of 30 days; or for a period of 60 days~~ at a surface mine ~~for a period of 60 days;~~ (ii)
95 for which a valid license is in effect; and (iii) at which reclamation activities have not been
96 completed.

97 "Inexperienced underground miner" means a person with less than six months of
98 underground coal mining experience.

99 "Intake air" means air that has not passed through the last active working place of the
100 split of any working section or any worked-out area, whether pillared or nonpillared, and by
101 analysis contains ~~not less than nineteen and one-half~~ at least 19.5 percent oxygen ~~nor~~ and no
102 ~~more than one-half of one 0.5~~ percent of carbon dioxide, ~~nor~~ and does not contain any hazardous
103 quantities of flammable gas ~~nor~~ or any harmful amounts of poisonous gas.

104 "Interested persons" means members of the ~~Mine Safety Committee~~ mine safety
105 committee and other duly authorized representatives of the employees at a mine; federal Mine
106 Safety and Health Administration employees; mine inspectors; and, to the extent required by
107 ~~this~~ the Act, any other person.

108 "Main entry" means the principal entry or set of entries driven through the coal bed or
109 mineral deposit from which cross entries, room entries, or rooms are turned.

110 "Mine" means any underground coal mine or surface coal mine. "Mines" that are
111 adjacent to each other and under the same management and ~~which that~~ are administered as
112 distinct units ~~shall be~~ are considered as separate mines. A site ~~shall~~ is not be a "mine" unless
113 the coal extracted or excavated ~~therefrom~~ from it is offered for sale or exchange, or used for
114 any other commercial purposes. The area in which coal is excavated under an exemption to the
115 permitting requirements of § ~~45.1-234~~ 45.2-xxx is not be a "mine."

116 "Mine fire" means an unplanned fire not extinguished within 30 minutes of discovery.

117 "Mine foreman" means a person ~~holding~~ who holds a valid certificate of qualification
118 as a foreman duly issued by action of the Board of Coal Mining Examiners.

119 "Mine inspector" means a public employee assigned by the Chief or the Director to
120 make mine inspections as required by ~~this the~~ the Act, and other applicable laws.

121 "Miner" means any individual working in a mine.

122 "Mineral" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and
123 any other solid material or substance of commercial value excavated in solid form from natural
124 deposits on or in the earth, exclusive of coal and those minerals ~~which that~~ occur naturally in
125 liquid or gaseous form.

126 "Monthly" means, unless otherwise stated, to have occurred any time during the period
127 of the first through the last day of a calendar month.

128 "Operator" means any person who operates, controls, or supervises a mine or any
129 independent contractor performing services or construction at ~~such~~ a mine.

130 "Panel entry" means a room entry.

131 "Permissible" means a device, process, ~~or~~ equipment, or method ~~heretofore or hereafter~~
132 ~~classified by such term~~ as "permissible" by the federal Mine Safety and Health Administration,
133 when such classification is adopted by the Chief or the Director, and includes, ~~unless otherwise~~
134 ~~herein expressly stated~~, all requirements, restrictions, exceptions, limitations, and conditions
135 attached to such classification by the federal Mine Safety and Health Administration unless
136 otherwise expressly stated in the Act.

137 "Return air" means air that has passed through (i) the last active working place on each
138 split; or ~~air that has passed through~~ (ii) worked-out areas, whether pillared or nonpillared.

139 "Room entry" means any entry or set of entries from which rooms are turned.

140 "Serious personal injury" means any injury ~~which~~ that has a reasonable potential to
141 cause death or ~~an~~ any injury other than a sprain or strain ~~which~~ that requires an admission to a
142 hospital for 24 hours or more for medical treatment.

143 "Substation" means an electrical installation containing generating or power-conversion
144 equipment and associated electric equipment and parts, such as switchboards, switches, wiring,
145 fuses, circuit breakers, compensators, and transformers.

146 "Surface coal mine" means (i) the pit and other active and inactive areas of surface
147 extraction of coal; (ii) on-site preparation plants, shops, tipples, and related facilities
148 appurtenant to the extraction and processing of coal; (iii) surface areas for the transportation
149 and storage of coal extracted at the site; (iv) impoundments, retention dams, tailing ponds, and
150 refuse disposal areas appurtenant to the extraction of coal from the site; (v) equipment,
151 machinery, tools, and other property used in, or to be used in, the extraction of coal from the
152 site; (vi) private ways and roads appurtenant to such ~~area~~ areas; and (vii) the areas used to
153 prepare a site for surface coal extraction activities. A site ~~shall commence~~ commences being a
154 surface coal mine upon the beginning of any site preparation activity other than exploratory
155 drilling or other exploration activity that does not disturb the surface, and ~~shall cease~~ ceases to
156 be a surface coal mine upon completion of initial reclamation activities.

157 "Travel way" means a passage, walk, or way regularly used and designated for persons
158 to go from one place to another.

159 "Underground coal mine" means (i) the working face and other active and inactive areas
160 of underground excavation of coal; (ii) underground travel ways, shafts, slopes, drifts, inclines,
161 and tunnels connected to such areas; (iii) on-site preparation plants, shops, tipples, and related
162 facilities appurtenant to the excavation and processing of coal; (iv) on-site surface areas for the
163 transportation and storage of coal excavated at the site; (v) impoundments, retention dams, and
164 tailing ponds appurtenant to the excavation of coal from the site; (vi) equipment, machinery,

165 tools, and other property, on the surface and underground, used in, or to be used in, the
166 excavation of coal from the site; (vii) private ways and roads appurtenant to such ~~area~~ areas;
167 (viii) the areas used to prepare a site for underground coal excavation activities; and (ix) areas
168 used for the drilling of vertical ventilation holes. A site ~~shall commence~~ commences being an
169 underground coal mine upon the beginning of any site preparation activity other than
170 exploratory drilling or other exploration activity, and ~~shall cease~~ ceases to be an underground
171 coal mine upon completion of initial reclamation activities.

172 "Weekly" means, unless otherwise stated, to have occurred any time during the period
173 of Sunday through Saturday of a calendar week.

174 "Work area," ~~as used in Chapter 14.4 (§ 45.1-161.253 et seq.) of this title,~~ means those
175 areas of a surface coal mine in production or being prepared for production and those areas of
176 the mine ~~which~~ that may pose a danger to miners at such areas.

177 "Worked-out area" means an area where underground coal mining has been completed,
178 whether pillared or nonpillared, excluding developing entries, return air courses, and intake air
179 courses.

180 "Working face" means any place in a mine in which work of extracting coal from its
181 natural deposit in the earth is performed during the mining cycle.

182 "Working place" means the area of an underground coal mine in by the last open
183 crosscut.

184 "Working section" means all areas from the loading point of a section to and including
185 the working faces.

186 **Drafting note: In the definition of "authorized person," the words "or duties" and**
187 **"or locations" are stricken pursuant to § 1-227, which states that throughout the Code**
188 **any word used in the singular includes the plural and vice versa. In the definitions of**
189 **"Coal Mine Safety Act" and "Federal mine safety law," the term "promulgated" with**
190 **regard to regulations is changed to "adopted" in keeping with recent title revisions**
191 **because "adopt" is more widely used and includes the promulgation process. In the**
192 **definitions of "experienced surface miner" and "experienced underground miner,"**

193 "more than six months" is changed to "six months or more" because the definition of
194 "inexperienced underground miner" means a person with "less than six months" of
195 experience. The change accounts for exactly six months. The language applying the
196 definition of "work area" to proposed Chapter 9 is stricken as unnecessary because this
197 definitions section already applies specifically to that chapter and there are no uses of the
198 term in other chapters of the Act. Technical changes are made.

199 § ~~45.1-161.9~~ 45.2-xxx. Safety and health.

200 In safety and health matters, all miners are to be governed by ~~this the Act and Chapter~~
201 ~~18, Article 4~~ (§ ~~45.1-221~~ 45.2-xxx et seq.) of ~~this title~~ Chapter 6, and any other sections of the
202 Code relating to the safety and health of miners and rules and regulations ~~promulgated~~ adopted
203 by the Department.

204 **Drafting note: The term "promulgate regulations" is changed to "adopt**
205 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
206 **and includes the promulgation process. Technical changes are made.**

207 § ~~45.1-161.10~~ 45.2-xxx. Special safety rules.

208 The operator of ~~every each~~ mine ~~shall have~~ has the right to adopt special safety rules for
209 the safety and operation of his mine ~~or mines~~, covering the work pertaining ~~thereto~~ to the mine
210 inside and outside of ~~the same, which, however,~~ such mine. Such special safety rules shall not
211 be in conflict with the provisions of ~~this the Act~~. ~~Such rules and~~, when established, shall be
212 posted at some conspicuous place about the ~~mines~~, mine where the rules may be seen by all
213 miners at such ~~mines~~, mine or in lieu thereof ~~the operator shall furnish~~ be furnished by the
214 operator as a printed copy of such rules to each of ~~his~~ the miners.

215 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
216 **throughout the Code any word used in the singular includes the plural and vice versa.**
217 **Language is updated for modern usage.**

218 § ~~45.1-161.11~~. ~~Persons not permitted~~ 45.2-xxx. Age requirement to work in mines.

219 A. No person under ~~eighteen~~ 18 years of age shall be permitted to work in or around
220 any mine, and in all cases of doubt, the operator, agent₂, or mine foreman shall obtain a birth

221 certificate or other documentary evidence, from the Registrar of Vital Statistics, or other
222 authentic ~~sources~~ source as to the age of such person.

223 B. No operator, agent, or mine foreman shall make a false statement as to the age of any
224 person under ~~eighteen~~ 18 years of age applying for work in or around any mine.

225 **Drafting note: Catchline is changed to better reflect the subject of the section.**

226 **Technical changes are made.**

227 § ~~45.1-161.12~~ 45.2-xxx. Prohibited acts by miners or other persons; miners to comply
228 with law.

229 A. No miner or other person shall (i) knowingly damage any shaft, lamp, instrument,
230 air course, or brattice or obstruct airways; (ii) carry in a mine any intoxicating liquors or
231 controlled drugs without the prescription of a licensed physician; (iii) disturb any part of the
232 machinery or appliances in a mine; (iv) open a door used for directing ventilation and fail to
233 close it again; (v) enter any part of a mine against caution; or (vi) disobey any order issued
234 pursuant to the provisions of ~~this~~ the Act.

235 B. Each miner at any mine shall comply fully with the provisions of ~~this~~ the Act and
236 other mining laws of the Commonwealth, including rules and regulations adopted by the
237 Department or the Board of Coal Mining Examiners, that pertain to his duties.

238 C. Any individual shall, upon the order of the Chief, complete training that addresses
239 the subject of any violation issued to the individual as a condition for abatement of the violation.

240 **Drafting note: Technical changes.**

241 § ~~45.1-161.13~~ 45.2-xxx. Safety materials and supplies.

242 It shall be the duty of ~~every~~ each operator or agent to keep on hand, at all times at each
243 mine, or within convenient distance, of each mine ~~at all times~~, a sufficient quantity of all
244 materials and supplies required to preserve the safety of the miners, as required by ~~this~~ the Act.
245 If for any reason, the operator or agent cannot procure the necessary materials or supplies, he
246 shall cause the miners to withdraw from the mine, or the portion thereof affected, until such
247 material or supplies are received.

248 **Drafting note: Technical changes.**

249 § ~~45.1-161.14~~ 45.2-xxx. Notifying miners of violations; compliance with Act.

250 A. The operator and his agent shall cooperate with the mine foreman and other officials
251 in the discharge of their duties as required by ~~this~~ the Act, and shall direct ~~that~~ the mine foreman
252 and all other miners employed at the mine to comply with all provisions of ~~this~~ the Act,
253 especially when ~~his~~ the operator's or his agent's attention is called to any violation of ~~this~~ the
254 Act by the Chief, the Director, or a mine inspector.

255 B. The operator of any mine or his agent shall operate his mines at all times in full
256 conformity with ~~this~~ the Act and any other mining law of the Commonwealth ~~at all times,~~
257 including rules and regulations adopted by the Department or the Board of Coal Mining
258 Examiners. This requirement shall not relieve any other person subject to the provisions of ~~this~~
259 the Act from his duty to comply with the requirements of ~~this~~ the Act.

260 C. Nothing in ~~this~~ the Act shall be construed to relieve an operator or his agent from the
261 duty imposed at common law to secure the reasonable safety of ~~their~~ his employees.

262 D. No operator, agent, or certified person shall knowingly permit any person to work in
263 any part of a mine in violation of written instructions issued by a mine inspector pursuant to
264 ~~this~~ the Act.

265 E. The operator or his agent shall fully comply with any action plan required by the
266 Chief to address hazardous conditions or practices.

267 **Drafting note: The regulations of the Board of Coal Mining Examiners are**
268 **included in the reference to the mining laws of the Commonwealth and technical changes**
269 **are made.**

270 Article 2.

271 Chief, ~~Director~~ of the Division of Mines of the Department and Mine Inspectors.

272 **Drafting note: Existing Article 2, relating to the Chief of the Division of Mines of**
273 **the Department of Mines, Minerals and Energy and mine inspectors, is retained. The**
274 **reference to the Director is removed from the article title because it does not represent the**
275 **content of the article. The Director is appointed and his duties are prescribed in proposed**
276 **Chapter 1.**

277 § ~~45.1-161.15~~ 45.2-xxx. Appointment of Chief.

278 The Chief of the Division of Mines of the Department of Mines, Minerals and Energy
279 shall be appointed by the Governor. The Chief ~~shall be~~ is the head of the Division of Mines,
280 and ~~shall be~~ is under the direction of and ~~shall report~~ reports to the Director.

281 **Drafting note: The full name of the Chief is added because this is the appointing**
282 **language. Technical changes are made.**

283 § ~~45.1-161.16~~ 45.2-xxx. Qualification of Chief.

284 The Chief shall have a thorough knowledge of the various systems of working and
285 ventilating coal mines, the nature and properties of mine gases and methods for their detection
286 and control, the control of mine roof, methods of rescue and recovery work in mine disasters,
287 the application of electricity and mechanical loading in mining operations, equipment and
288 explosives used in mining, methods for preventing gas and dust explosions in mines, and mine
289 haulage. The Chief shall possess such experience or educational background in management as
290 determined necessary by the Governor and shall be ~~not less than thirty~~ at least 30 years of age.

291 **Drafting note: Technical changes.**

292 § ~~45.1-161.17~~ 45.2-xxx. Affiliations of Department personnel with labor union, coal
293 company, etc.; interest in coal mine; inspections of mines where inspector previously employed.

294 A. In addition to compliance with the provisions of the State and Local Government
295 Conflict of Interests Act (§ 2.2-3100 et seq.), neither the Chief nor any other officer or employee
296 of the Department shall, upon taking office or being employed, or at any other time during the
297 term of his office or employment, have any affiliation with any operating coal company,
298 operators' association, or labor union. Neither the Chief nor any other officer while in office
299 shall be directly or indirectly interested as owner, partner, proprietor, lessor, operator,
300 superintendent, or engineer of any coal mine, nor shall the Chief, or any other officer while in
301 office, own any stock in a corporation ~~owning~~ that owns a coal mine either directly or through
302 a subsidiary.

303 B. Neither the Chief nor any mine inspector shall perform an inspection at any mine site
304 at which that individual was last employed for a period of two years following termination of
305 his employment.

306 **Drafting note: Technical change.**

307 ~~§ 45.1-161.18~~ 45.2-xxx. Appointment and general qualifications of mine inspectors.

308 Mine inspectors shall be appointed by the Director.

309 ~~§ 45.1-161.19. Qualifications of mine inspectors generally.~~

310 Each mine inspector shall (i) ~~be not less than twenty-five~~ at least 25 years of age; (ii)
311 be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and
312 (iv) hold a certificate as a mine inspector issued by the Board of Coal Mining Examiners.

313 **Drafting note: Existing §§ 45.1-161.18 and 45.1-161.19 are combined.**

314 ~~§ 45.1-161.20~~ 45.2-xxx. Qualifications of inspectors of coal mines.

315 A. Each mine inspector conducting inspections of underground coal mines shall have a
316 thorough knowledge of the various systems of working and ventilating underground coal mines;
317 the nature and properties of mine gases and methods for their detection and control; the control
318 of mine roof and ground control; methods of rescue and recovery work in mine disasters; the
319 application of electricity and mechanical loading in mining operations; equipment and
320 explosives used in mining; methods for preventing gas and dust explosions in mines; and mine
321 haulage.

322 B. Each mine inspector conducting inspections of surface coal mines shall have a
323 thorough knowledge of the various systems of working surface coal mines; the nature and
324 properties of mine gases and methods of their detection and control; ground control; methods
325 of rescue and recovery work in surface mine disasters; the application of electricity and
326 mechanical loading in mining operations; equipment and explosives used in mining; methods
327 for preventing gas and dust explosions in surface facilities on mine property; and mine haulage.

328 **Drafting note: Technical changes.**

329 ~~§ 45.1-161.21~~ 45.2-xxx. Duties of the Chief; penalty.

330 A. The Chief shall (i) supervise execution and enforcement of all laws, including rules
331 and regulations adopted by the Department or the Board of Coal Mining Examiners, pertaining
332 to the health and safety of persons employed within or at coal mines within the Commonwealth,
333 and the protection of property used in connection therewith, and to (ii) perform all other duties
334 required pursuant to this the Act.

335 B. The Chief shall keep a record of all inspections of coal mines made by him and the
336 mine inspectors. The Chief shall make a comprehensive report to the Director. The Chief shall
337 also keep a permanent record ~~thereof~~ of such inspections properly indexed, which record shall
338 at all times be open to inspection by any citizen of the Commonwealth.

339 C. The Chief is authorized to compel individuals to complete training that addresses the
340 subject of a violation issued to the individual as a condition for abatement of the violation.

341 D. The Chief is authorized to require operators to submit for approval action plans to
342 address hazardous conditions or practices.

343 E. For the purpose of investigating (i) an accident or (ii) a willful act resulting in a notice
344 of violation or closure order, the Chief shall have the power to compel the attendance of
345 witnesses and to administer oaths or affirmations. Any person who knowingly provides any
346 false statement, representation, or certification during such investigations is guilty of a Class 1
347 misdemeanor.

348 F. The Chief shall supervise execution and enforcement of all reciprocal agreements
349 made with responsible officers of other states that implicate any part of the ~~Coal Mine Safety~~
350 ~~Act, Chapters 14.2 (§ 45.1-161.7 et seq.), 14.3 (§ 45.1-161.105 et seq.), and 14.4 (§ 45.1-~~
351 ~~161.253 et seq.) of Title 45.1.~~

352 **Drafting note: The citation in subsection F to the Coal Mine Safety Act is shortened**
353 **because the Act is defined for the chapter in proposed § 45.2-xxx [existing § 45.1-161.8].**
354 **Technical changes are made, including organizational changes in subsection A relating to**
355 **the duties of the Chief.**

356 ~~§ 45.1-161.22. Repealed.~~

357 **Drafting note: Repealed by Acts 1997, c. 390.**

358 § ~~45.1-161.23~~ 45.2-xxx. Technical specialists.

359 The Director may appoint technical specialists in the areas of roof control, electricity,
360 ventilation, and other mine specialties. Technical specialists shall have all the qualifications of
361 a mine inspector plus such specialized knowledge in their field as may be required. Technical
362 specialists shall advise the Director and mine operators in the areas of their specialty. Technical
363 specialists shall have the power of an inspector to issue a closure order only in cases of imminent
364 danger.

365 **Drafting note: Technical change.**

366 Article 3.

367 Certification of Coal Mine Workers.

368 **Drafting note: Existing Article 3, pertaining to the certification of coal mine**
369 **workers, is retained.**

370 § ~~45.1-161.24~~. 45.2-xxx. The Board of Coal Mining Examiners; purpose.

371 ~~A. There is hereby created the~~ The Board of Coal Mining Examiners which shall consist
372 (the Board) is established as a supervisory board in the executive branch of state government.
373 The purpose of the Board is to issue certifications authorizing the performance of certain tasks.

374 **Drafting note: Part of the first sentence of existing § 45.1-161.24 is retained as**
375 **proposed § 45.2-xxx. A statement of the purpose of the Board of Coal Mining Examiners**
376 **is added and the board language is updated to reflect current language preferred in the**
377 **Code. The remainder of existing § 45.1-161.24 is retained in the following section as**
378 **proposed § 45.2-xxx.**

379 § 45.2-xxx. Board membership; terms; quorum; meetings.

380 A. The Board of Coal Mining Examiners shall have a total membership of five members-
381 One member shall be the Chief, and that shall consist of four nonlegislative citizen members
382 and one ex officio member. The four nonlegislative citizen members shall be appointed by the
383 Governor. One appointed member shall be as follows: one who is a miner holding who holds a
384 first-class first-class mine foreman's certificate with at least five years of experience in
385 underground coal mining and who is employed at an underground coal mine in the

386 Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment. ~~One~~
387 ~~appointed member shall be; one who is~~ a miner with at least five years of experience in surface
388 coal mining ~~and~~ who is employed at a surface coal mine in the Commonwealth in a
389 nonmanagerial, nonsupervisory capacity at the time of appointment. ~~One appointed member~~
390 ~~shall be; one who is~~ an individual ~~holding who holds~~ a ~~first-class~~ first-class mine foreman's
391 certificate with at least five years of experience in the operation of underground coal mines;
392 ~~who~~ and is (i) an operator of an underground coal mine, (ii) an officer or director of a
393 corporation operating an underground coal mine, (iii) a general partner of a partnership
394 operating an underground coal mine, or (iv) an employee in a managerial or supervisory
395 capacity of an operator of an underground coal mine in the Commonwealth at the time of
396 appointment. ~~One appointed member shall be; and one who is~~ an individual with at least five
397 years of experience in the operation of surface coal mines; who is ~~(i)~~ (a) an operator of a surface
398 coal mine, ~~(ii)~~ (b) an officer or director of a corporation operating a surface coal mine, ~~(iii)~~ (c)
399 a general partner of a partnership operating a surface coal mine, or ~~(iv)~~ (d) an employee in a
400 managerial or supervisory capacity of an operator of a surface coal mine in the Commonwealth
401 at the time of appointment. ~~All appointed~~ Nonlegislative citizen members of the Board shall be
402 residents of the Commonwealth. The Chief or his designee shall serve ex officio with voting
403 privileges.

404 B. ~~The terms of office of the appointed members~~ Members of the Board shall be as
405 follows: ~~one shall be appointed for an initial term of one year; one shall be appointed for an~~
406 ~~initial term of two years; one shall be appointed for an initial term of three years; and one shall~~
407 ~~be appointed for an initial term of four years. Thereafter, the members shall be appointed for~~
408 terms of four years. The Chief shall serve a term coincident with his term of office. Vacancies
409 occurring on the Board among appointed members shall be filled by the Governor for the
410 unexpired term. All members may be reappointed.

411 C. The Chief shall serve as chairman of the Board.

412 ~~§ 45.1-161.25. Meetings of Board of Coal Mining Examiners; compensation.~~

413 ~~D.~~ The Board of Coal Mining Examiners shall meet at least once a year and shall be
414 called by the Chief to meet at such other times as he deems necessary. The Board shall meet at
415 such place or places and at such times as may be designated by the Chief, and the Board shall
416 remain in session until its work is completed, but no one session of the Board shall continue
417 more than three days.

418 **Drafting note: All but part of the first sentence of existing § 45.1-161.24 [previous**
419 **section] is retained and is combined with the first two sentences of existing § 45.1-161.25**
420 **as proposed § 45.2-xxx. The board language for the Board of Coal Mining Examiners is**
421 **updated to reflect current language preferred in the Code and obsolete language**
422 **establishing the initial staggering of terms is proposed for deletion. Technical changes are**
423 **made. The remaining sentence in existing § 45.1-161.25 is retained as proposed § 45.2-xxx**
424 **[following section].**

425 § 45.2-xxx. Board compensation; expenses.

426 ~~Out of Nonlegislative citizen members of the Board of Coal Mining Examiners shall~~
427 ~~receive such compensation for the performance of their duties as provided in § 2.2-2813. All~~
428 ~~such nonlegislative citizen members shall be reimbursed for all reasonable and necessary~~
429 ~~expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.~~
430 Funding for the costs of compensation and expenses of such members shall be provided by the
431 Coal Mining Examiners' Fund, there shall be paid to each member of the Board, except the
432 established in § 45.2-xxx [§ 45.1-161.31]. The Chief who shall serve without extra pay,
433 reimbursement for expenses and compensation as is provided by pursuant to § 2.2-2813.

434 **Drafting note: The third sentence in existing § 45.1-161.25 is retained as proposed**
435 **§ 45.2-xxx. The board language for the Board of Coal Mining Examiners is updated to**
436 **reflect current language preferred in the Code, the cross-reference to the Coal Mining**
437 **Examiners' Fund is added, and technical changes are made. The first two sentences of**
438 **existing § 45.1-161.25 are retained as proposed § 45.2-xxx [previous section].**

439 ~~§ 45.1-161.26~~ 45.2-xxx. Records of the Board of Coal Mining Examiners.

440 The Chief shall preserve in his office a record of the meetings and transactions of the
441 Board of Coal Mining Examiners and of all certificates issued by the Board.

442 **Drafting note: Catchline is shortened.**

443 ~~§ 45.1-161.27~~ 45.2-xxx. Nominations for ~~the Board of Coal Mining Examiners~~.

444 Nominations for appointments to the Board of Coal Mining Examiners may be
445 submitted to the Governor by the Director and each organization of coal miners and coal
446 industry interests in the Commonwealth. Nominations are to be made to the Governor by June
447 1 of the year in which the terms of appointments of members expire. In no case shall the
448 Governor be bound to make any appointment from the nominations submitted.

449 **Drafting note: Catchline is shortened.**

450 ~~§ 45.1-161.28~~ 45.2-xxx. Certification of certain persons employed in coal mines;
451 powers ~~and duties~~ of ~~the Board of Coal Mining Examiners~~.

452 A. The Board of Coal Mining Examiners may require certification of persons who work
453 in coal mines and persons whose duties and responsibilities in relation to coal mining require
454 competency, skill, or knowledge in order to perform ~~consistently~~ in a manner consistent with
455 the preservation of the health and safety of persons and property. The following certifications
456 shall be issued by the Board, and a person ~~holding who holds~~ such certification shall be
457 authorized to perform the tasks ~~which this~~ that the Act or any regulation ~~promulgated~~ adopted
458 by the Board or by the Department requires to be performed by such ~~a~~ certified person:

- 459 1. ~~First-class~~ First-class mine foreman;
- 460 2. ~~First-class~~ First-class shaft or slope foreman;
- 461 3. Surface foreman;
- 462 4. Preparation plant foreman;
- 463 5. Electrical maintenance foreman;
- 464 6. Dock foreman;
- 465 7. Top person;
- 466 8. Underground shot firer;
- 467 9. Surface blaster;

- 468 10. Hoisting engineer;
469 11. Electrical repairman;
470 12. Automatic elevator operator;
471 13. Mine inspector;
472 14. Qualified gas detector;
473 15. Diesel engine mechanic;
474 16. Diesel engine mechanic instructor;
475 17. First aid instructor;
476 18. Advanced first aid;
477 19. Chief electrician; and
478 20. General coal miner.

479 B. Certification shall also be required for such additional tasks as the Board may require
480 by regulation.

481 C. The Board shall have the power to ~~promulgate~~ adopt regulations necessary or
482 incidental to the performance of duties or execution of powers conferred under this title, which
483 regulations shall be ~~promulgated~~ adopted in accordance with the provisions of Article 2 (§ 2.2-
484 4006 et seq.) of the Administrative Process Act.

485 D. The Board is authorized to ~~promulgate~~ adopt regulations establishing guidelines for
486 on-site examinations of mine foremen conducted by mine inspectors pursuant to § ~~45.1-161.35~~
487 45.2-xxx.

488 **Drafting note: The catchline is shortened and updated to reflect the content of the**
489 **statute. The term "promulgate regulations" is changed to "adopt regulations" in keeping**
490 **with recent title revisions because "adopt" is more widely used and includes the**
491 **promulgation process. Technical changes are made to modernize language.**

492 § ~~45.1-161.29~~ 45.2-xxx. Examinations required for Coal Mining Certifications.

493 A. The Board of Coal Mining Examiners may require examination of ~~applicants~~ an
494 applicant for certification; however, the Board shall require examination of ~~applicants~~ an
495 applicant for the mine inspector certification. The Board may require such other information

496 from ~~applicants~~ each applicant as may be necessary to ascertain competency and qualifications
497 for each task. Except as specifically provided by ~~this the~~ the Act, the Board shall prescribe the
498 qualifications for any certification. The examinations shall be conducted under such rules,
499 conditions, and regulations as the Board shall ~~promulgate~~ adopt. Such rules, when ~~promulgated~~
500 adopted, shall (i) be made a part of the permanent record of the Board, shall (ii) be periodically
501 be published, and shall (iii) be of uniform application to all applicants.

502 B. Any certificate issued by the Board shall be valid from the date of issuance unless
503 and until it has been suspended pursuant to § ~~45.1-161.34~~, ~~45.2-xxx~~ or ~~has been~~ revoked by the
504 Board pursuant to § ~~45.1-161.35~~ 45.2-xxx.

505 **Drafting note: The term "promulgate regulations" is changed to "adopt**
506 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
507 **and includes the promulgation process. Technical changes are made.**

508 § ~~45.1-161.30~~ 45.2-xxx. Performance of certain tasks by uncertified persons; penalty.

509 A. ~~It shall be~~ is unlawful for any person to perform any task requiring certification by
510 the Board of Coal Mining Examiners until he has been certified. ~~It shall~~ is also ~~be~~ unlawful for
511 an operator or his agent to permit any uncertified person to perform such tasks. A violation of
512 ~~this subsection shall constitute~~ section constitutes a Class 1 misdemeanor. Each day of operation
513 without a required certification ~~shall constitute~~ constitutes a separate offense.

514 B. ~~A certificate issued by the Board of Examiners prior to July 1, 1994, shall be~~
515 ~~acceptable as a certificate issued by the Board of Coal Mining Examiners until the Board of~~
516 ~~Coal Mining Examiners shall provide otherwise by appropriate regulations.~~

517 **Drafting note: Subsection B is proposed for deletion because it is an obsolete**
518 **provision. Technical changes are made.**

519 § ~~45.1-161.31~~. Examination fees; 45.2-xxx. Coal Mining Examiners' Fund.

520 A. ~~A reasonable fee in an amount set by the Board of Coal Mining Examiners, not to~~
521 ~~exceed \$50, shall be paid to the Chief by each person examined before the commencement of~~
522 ~~examination.~~ There is hereby created in the state treasury a special nonreverting fund to be
523 known as the Coal Mining Examiners' Fund, referred to in this section as "the Fund." The Fund

524 shall be established on the books of the Comptroller. All such fees collected pursuant to § 45.2-
525 xxx, together with moneys collected pursuant to §§ 45.1-161.32 45.2-xxx and 45.1-161.34 45.2-
526 xxx, shall be retained by the Department and shall be promptly paid by the Chief into the state
527 treasury and shall constitute credited to the Coal Mining Examiners' Fund. Interest earned on
528 moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in
529 the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general
530 fund but shall remain in the Fund. Moneys in the Fund

531 ~~The fund shall be administered by the Chief to cover~~ used solely for the purposes of
532 covering the costs of administering the miner certification, for which purposes such moneys are
533 hereby appropriated.;

534 ~~B. The~~ the cost of printing certificates and other necessary forms; and the incidental
535 expenses incurred by the Board in conducting examinations, reviewing examination papers,
536 and conducting its other duties pursuant to this article shall also be paid out of the Coal Mining
537 Examiners' Fund. Expenditures and disbursements from the Fund shall be made by the State
538 Treasurer on warrants issued by the Comptroller upon written request signed by the Chief. The
539 Chief shall keep accounts and records concerning the receipts and expenditures of the fund
540 Fund as required by the Auditor of Public Accounts.

541 § 45.2-xxx. Examination fees.

542 A reasonable fee in an amount set by the Board of Coal Mining Examiners, not to exceed
543 \$50, shall be paid to the Chief by each person examined before the commencement of
544 examination. Fees collected shall be deposited in the Coal Mining Examiners' Fund created by
545 § 45.2-xxx.

546 **Drafting note: Existing § 45.1-161.31 is divided into two proposed sections to**
547 **separate two distinct topics. The nonreverting fund language for the Coal Mining**
548 **Examiners' Fund is updated to reflect current language requested by the Department of**
549 **the Treasure for nonreverting funds in the Code. Technical changes are made.**

550 ~~§ 45.1-161.32~~ 45.2-xxx. Replacement of lost or destroyed certificates.

551 If any certificate issued by the Board of Coal Mining Examiners is lost or destroyed, the
552 Chief may supply a copy thereof to the person to whom it was issued, upon the payment of a
553 reasonable fee in an amount set by the Board not to exceed \$10, provided that it has been
554 established to his satisfaction that the loss or destruction actually occurred and that the person
555 seeking such copy was the holder of such certificate.

556 **Drafting note: No change.**

557 ~~§ 45.1-161.33~~ 45.2-xxx. Reciprocal acceptances of other certifications.

558 A. In lieu of an examination prescribed by law or regulation, the Board of Coal Mining
559 Examiners may issue to any person holding a certificate issued by another state a certificate
560 permitting him to perform similar tasks in the Commonwealth, provided that (i) the Board finds
561 that the requirements for certification in such state are substantially equivalent to those of
562 Virginia and (ii) holders of certificates issued by the Board are permitted to perform similar
563 tasks in such state, and obtain similar certification from such state if required, upon presentation
564 of the certificate issued by the Board and without additional testing, training, or other
565 requirements not directly related to program administration.

566 B. If the issuing authority in another state has revoked or suspended a certificate of a
567 person who holds a similar Virginia certificate issued pursuant to this section, the person shall
568 notify the Chief of such action by the other state within 10 days of such action. The Chief shall
569 schedule a hearing of the ~~Board of Coal Mining Examiners~~ to determine whether his Virginia
570 certificate ~~should~~ shall be revoked or suspended.

571 **Drafting note: Technical changes.**

572 ~~§ 45.1-161.34~~ 45.2-xxx. Continuing education requirements.

573 A. The Board of Coal Mining Examiners shall ~~promulgate~~ adopt regulations
574 establishing requirements for programs of continuing education for holders of certifications.
575 The Board shall establish (i) the content and amount of continuing education to be required for
576 maintaining certification; (ii) guidelines for the content of continuing education programs; (iii)
577 procedures for approving continuing education programs and sponsors; (iv) distribution to
578 holders of certificates of appropriate information regarding continuing education requirements;

579 (v) provisions allowing surplus hours of continuing education to be carried forward from one
580 period to meet the requirements for the next period; (vi) procedures for determining compliance
581 with continuing education requirements; (vii) requirements for a certificate holder to provide
582 the Board with his current address and such further administrative information as may be
583 reasonable; and (viii) the length of time a certificate may be suspended for failure to comply
584 with continuing education requirements before such certificate shall be revoked. The Board
585 may also establish by regulation a fee to recover the reasonable costs of reissuing certificates
586 or otherwise ascertaining that the requirements of this section have been satisfied.

587 B. A certification issued by the Board of Coal Mining Examiners shall be suspended if
588 the holder fails to comply with the continuing education requirements established by the Board.
589 The suspension shall be vacated upon compliance with the continuing education requirements.
590 However, if the holder of a certificate does not comply with the continuing education
591 requirements within the period of time established by the Board, the certificate shall be revoked.

592 **Drafting note: The term "promulgate regulations" is changed to "adopt**
593 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
594 **and includes the promulgation process.**

595 ~~§ 45.1-161.35~~ 45.2-xxx. Revocation of certificates.

596 A. The Board of Coal Mining Examiners may suspend, revoke, or take other action
597 regarding any certificate upon finding that (i) the holder has ~~(i)~~ (a) failed to comply with the
598 continuing education requirements within the period following the suspension of the certificate
599 as provided in ~~§ 45.1-161.34~~ 45.2-xxx; ~~(ii)~~ (b) been intoxicated while in duty status; ~~(iii)~~ (c)
600 neglected his duties; ~~(iv)~~ (d) violated any provision of ~~this the~~ Act or any other coal mining law
601 of the Commonwealth; ~~(v)~~ (e) used any controlled substance without the prescription of a
602 licensed prescriber; or ~~(vi)~~ (ii) other sufficient cause exists. The Board shall also suspend,
603 revoke, or take other action regarding the ~~first-class~~ first-class mine foreman certificate of any
604 mine foreman who fails to display a thorough understanding of the roof control plan and
605 ventilation for the area of the mine for which he is responsible for implementing, when
606 examined on-site by a mine inspector in accordance with guidelines ~~promulgated~~ adopted by

607 the Board. In such a case, the Board shall make a determination, based on evidence presented
608 by interested parties, of whether the mine foreman had a thorough knowledge of such plans at
609 the time of his examination by the mine inspector.

610 B. The Board may act to suspend, revoke, or take other action regarding any certificate
611 upon the presentation of written charges alleging prohibited conduct set forth in subsection A
612 by (i) the Chief or the Director or his designated agent; (ii) the operator of a mine at which such
613 person is employed; or (iii) ~~ten~~ 10 persons employed at the mine at which such person is
614 employed, or, if ~~less~~ fewer than ~~ten~~ 10 persons are employed at the mine, a majority of the
615 employees at the mine. The Board may act on its own initiative to suspend, revoke, or take
616 other action on any certificate for grounds set forth in ~~item~~ clause (i) (a) of subsection A.

617 C. Any person holding a certification issued by the Board shall report to the Chief;
618 within 30 days of any criminal conviction in any court of competent jurisdiction for possession
619 or use of any controlled substance without the prescription of a licensed prescriber. This
620 conviction shall result in the immediate temporary suspension of all certificates held by such
621 person pending a hearing before the Board.

622 D. Any miner present at any mine shall be deemed to have given consent to reasonable
623 search, at the direction of the Chief by employees of the Department, of his person and his
624 personal property located at the mine. This search shall be limited to the investigation of
625 potential violations of the ~~Coal Mine Safety Act (§ 45.1-161.7 et seq.)~~.

626 E. All information regarding substance abuse test results of certified persons, written or
627 otherwise, received by the Department or Board, shall be confidential. Any hearing of the Board
628 in which this information is presented shall be conducted as a closed session in accordance with
629 the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

630 F. An affirmative vote of a majority of members of the Board who are qualified to vote
631 shall be required for any action to suspend, revoke, or take other action regarding a certificate.

632 G. Prior to suspending, revoking, or taking other action regarding a certificate, the Board
633 shall give due notice to the holder of the certificate and conduct a hearing. Any hearing shall be
634 conducted in accordance with § 2.2-4020 unless the parties agree to informal proceedings. The

635 hearing may be conducted by the Board or, in the Board's discretion, by a hearing officer as
636 provided in Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

637 H. Any hearing conducted after the temporary suspension of a miner's certificate due to
638 (i) a criminal conviction in any court of competent jurisdiction for possession or use of any
639 controlled substance without the prescription of a licensed prescriber as provided for in
640 subsection C, (ii) a failure to pass a substance abuse test required by the Chief pursuant to §
641 ~~45.1-161.78~~ 45.2-xxx, (iii) a failure to pass a pre-employment substance abuse screening test,
642 (iv) a discharge for violation of the company's substance or alcohol abuse policies, (v) a positive
643 test for the use of any controlled substance without the prescription of a licensed prescriber, (vi)
644 a positive test for intoxication while on duty status, or (vii) a failure to complete a substance
645 abuse program pursuant to § ~~45.1-161.87~~, 45.2-xxx shall be conducted within 60 days of the
646 temporary suspension. The Board shall make every effort to hold the hearing within 40 days of
647 the temporary suspension.

648 I. Any person who has been aggrieved by a decision of the Board shall be entitled to
649 judicial review of such decision. Appeals from such decisions shall be in accordance with
650 Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

651 **Drafting note: The term "promulgate regulations" is changed to "adopt**
652 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
653 **and includes the promulgation process. Technical changes are made, including in**
654 **subsection A, where the organization of the list of findings is clarified.**

655 § ~~45.1-161.36~~ 45.2-xxx. Reexamination.

656 The holder of a certificate revoked pursuant to § ~~45.1-161.35~~ 45.2-xxx shall be entitled
657 to examination by the Board of Coal Mining Examiners after three months have elapsed from
658 the date of revocation of the certificate if he can prove to the satisfaction of the Board that the
659 cause for revocation of his certificate has ceased to exist. However, no person convicted of
660 violating subsection A of § ~~45.1-161.177~~ 45.2-xxx or §§ ~~45.1-161.178~~ § 45.2-xxx, ~~45.1-~~
661 ~~161.232~~ 45.2-xxx, or § ~~45.1-161.233~~ 45.2-xxx shall be eligible for examination for a period of

662 not less than one year nor more than three years following such conviction, such period to be
663 set by the Board in its discretion at the time of revocation of the certificate.

664 **Drafting note: Technical changes.**

665 ~~§ 45.1-161.37~~ 45.2-xxx. General coal miner certification.

666 A. Every person working in a coal mine in Virginia shall hold a general coal miner
667 certificate issued by the Board of Coal Mining Examiners. ~~Any person who has been employed~~
668 ~~to work in a coal mine in Virginia prior to January 1, 1996, shall submit a complete application~~
669 ~~for certification as a general coal miner by September 30, 2007.~~ The Board of Coal Mining
670 Examiners shall issue a general coal miner certification upon submittal of a complete
671 application.

672 B. Each applicant for a general coal miner certificate who has not been employed to
673 work in a Virginia coal mine prior to January 1, 1996, shall prove to the Board that he has
674 knowledge of first aid practices and has a general working knowledge of the provisions of ~~this~~
675 the Act, and applicable regulations, pertaining to coal mining health and safety. Each applicant
676 shall have completed the ~~new~~ miner training requirements of 30-~~CFR~~ C.F.R. Part 48 or submit
677 proof of at least one year of experience in a coal mine prior to issuance of the General Coal
678 Miner certification.

679 **Drafting note: An obsolete provision is proposed for deletion and technical changes**
680 **are made.**

681 ~~§ 45.1-161.38~~ 45.2-xxx. First-class mine foreman certification.

682 A. The operator of any coal mine where three or more persons work during any part of
683 a 24-hour period shall employ a mine foreman. The operator shall employ as a mine foreman
684 only persons holding a first-class mine foreman certificate. The holder of such a certificate shall
685 present the certificate, or a ~~photostatic~~ copy thereof, to the operator where he is employed, who
686 shall file the certificate or its copy in the office at the mine, and the operator shall make it
687 available for inspection by interested persons.

688 B. The holder of a first-class mine foreman certificate shall be authorized to act as
689 foreman for ~~all any~~ any underground coal ~~mines~~ mine.

690 C. ~~Applicants~~ An applicant for a first-class mine foreman certificate shall be not less
691 than 23 years of age and shall have had at least five years of experience in a coal mine ~~(, at least~~
692 three years of which shall have been in an underground coal mine). A graduate of an approved
693 course in mining engineering at a baccalaureate institution of higher education shall be given
694 credit for three of the five years of practical experience required. An applicant who possesses a
695 degree in mining technology shall be given credit for two of the five years of practical
696 experience required. If the applicant meets the above requirements, makes 85 percent or more
697 on each of the subjects of the written examination, and passes required map and gas
698 examinations, he shall be entitled to a first-class mine foreman certificate. The written
699 examination shall address, among other relevant topics, the theory and practice of coal mining;
700 the nature and properties of noxious, poisonous, and explosive gases, and methods for their
701 detection and control; the requirements of the coal mining laws of ~~this~~ the Commonwealth,
702 including rules and regulations adopted by the Department or the Board of Coal Mining
703 Examiners; and the responsibilities and duties of a mine foreman under state law.

704 D. Each candidate for certification as a first-class mine foreman shall complete the
705 course or courses of instruction in first aid as provided in subsection A of § ~~45.1-161.101~~ 45.2-
706 xxx and pass an examination relating thereto, approved by the Board of Coal Mining
707 Examiners.

708 **Drafting note: Technical changes.**

709 § ~~45.1-161.39~~ 45.2-xxx. Surface foreman certification.

710 A. ~~Applicants~~ An applicant for a surface foreman certificate shall be at least 23 years of
711 age and have had at least five years of experience in a coal mine ~~with,~~ at least three years of
712 ~~such experience~~ which shall have been in a surface coal mine. A graduate of an approved course
713 in mining engineering at a baccalaureate institution of higher education shall be given credit for
714 three of the five years of practical experience required. An applicant who possesses a degree in
715 mining technology shall be given credit for two of the five years of required practical
716 experience. ~~Applicants~~ Each applicant shall demonstrate to the Board of Coal Mining
717 Examiners a thorough knowledge of the theory and practice of surface coal mining by making

718 85 percent or more on the written examination. In addition, each applicant shall pass the
719 examination in gas detection. The holder of a surface foreman certificate issued by the Board
720 shall be authorized to act as surface foreman at any surface coal mine.

721 B. Each candidate for certification as a surface foreman shall complete, at a minimum,
722 a 24-hour course of instruction in advanced first aid taught by a certified advanced first aid
723 instructor in accordance with subsection A of ~~§ 45.1-161.101, 45.2-xxx~~ and pass an
724 examination relating thereto approved by the Board of Coal Mining Examiners. No course or
725 examination shall be required of ~~candidates~~ a candidate holding a current higher level of
726 emergency medical certification from the Virginia Department of Health.

727 ~~C. All holders of a surface foreman certification issued prior to July 1, 2010, except~~
728 ~~those holding a current higher level of emergency medical certification from the Virginia~~
729 ~~Department of Health, shall complete by December 31, 2011, at a minimum, a 24-hour course~~
730 ~~of instruction in advanced first aid taught by a certified advanced first aid instructor in~~
731 ~~accordance with subsection A of § 45.1-161.101.~~

732 **Drafting note: An obsolete provision is proposed for deletion and technical changes**
733 **are made.**

734 ~~§ 45.1-161.40~~ 45.2-xxx. Chief electrician certification.

735 Each applicant for a chief electrician certificate shall demonstrate to the Board of Coal
736 Mining Examiners by written and oral examination that he has a thorough knowledge of the
737 theory and practice of electricity that pertains to coal mining. In addition, each applicant shall
738 pass the examinations in first aid and gas detection. The holder of a chief electrician certificate
739 issued by the Board shall be authorized to act as chief electrician in any coal mine.

740 **Drafting note: No change.**

741 ~~§ 45.1-161.41~~ 45.2-xxx. Top person certificate.

742 Each applicant for a top person certificate shall demonstrate to the Board of Coal Mining
743 Examiners by written and oral examination that he has a thorough knowledge of the theory and
744 practice of shaft and slope mine construction. In addition, each applicant shall pass the

745 examinations in first aid and gas detection. The holder of a top person certificate issued by the
746 Board shall be authorized to act as top person in any coal mine.

747 **Drafting note: No change.**

748 ~~Article 4.~~

749 ~~Certification of Mineral Mine Workers.~~

750 **Drafting note: Repealed by Acts 1997, c. 390.**

751 ~~45.1-161.42 through 45.1-161.56. [Repealed.]~~

752 **Drafting note: Repealed by Acts 1997, c. 390.**

753 ~~Article 5.4.~~

754 ~~Licensing for Operation of Coal Mines.~~

755 **Drafting note: Existing Article 5, relating to licensing for operation of coal mines,**
756 **is retained as proposed Article 4. This article and all subsequent articles are renumbered**
757 **to reflect the repeal of existing Article 4 in 1997. Article title is revised to better reflect the**
758 **subject of the article.**

759 ~~§ 45.1-161.57 45.2-xxx.~~ License required for operation of ~~coal mines~~ a coal mine; term.

760 A. No person shall engage in the operation of any coal mine within ~~this the~~
761 Commonwealth without first obtaining a license for the operation of a coal mine from the
762 Department. A license for the operation of a coal mine shall be required prior to commencement
763 of the operation of a mine. A separate license ~~shall be secured~~ is required for each mine
764 operated. Licenses shall be in such form as the Director may prescribe. The license shall be
765 posted in a conspicuous place near the main entrance to the mine. The license shall not be
766 transferable, and every change in ownership of a mine shall be reported to the Department as
767 provided in subsection B of § ~~45.1-161.62~~ 45.2-xxx.

768 ~~B. Licenses~~ Each license for the operation of a coal mines mine shall be valid for a
769 period of no more than one year following the date of issuance ~~and~~. License renewal shall be
770 ~~renewed annually obtained~~ within fifteen 15 business days following the ~~anniversary of the date~~
771 ~~the mine began operations~~ expiration of the license.

772 ~~§ 45.1-161.58. Fee to accompany application for license; fund; disposition of fees.~~

773 C. Each application for a license for the operation of a coal mine or a renewal or transfer
774 of a license for the operation of a coal mine shall be submitted to the Department, accompanied
775 by a fee, payable to the State Treasurer, in the amount of \$180 \$350.

776 **Drafting note: Existing § 45.1-161.57 and the first sentence of existing § 45.1-161.58**
777 **are combined. License renewal provisions in subsection B are reworded for consistency.**
778 **The fee amount is updated from \$180 to \$350 to reflect the current fee. Technical changes**
779 **are made.**

780 § 45.2-xxx. Coal Mine Operator License Fund.

781 There is hereby created in the state treasury a special nonreverting fund to be known as
782 the Coal Mine Operator License Fund, referred to in this section as "the Fund." The Fund shall
783 be established on the books of the Comptroller. All such fees collected pursuant to the
784 provisions of § 45.2-xxx [45.1-161.58] shall be retained by the Department and paid into the
785 state treasury and shall constitute a fund under the control of the Director. Expenditures from
786 this fund may be made by the Department for credited to the Fund. Interest earned on moneys
787 in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund,
788 including interest thereon, at the end of each fiscal year shall not revert to the general fund but
789 shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of purchasing
790 or commissioning safety equipment, safety training, safety education, or for any expenditure to
791 further the safety program in the mining industry. All expenditures and disbursements from this
792 fund must be approved the Fund shall be made by the State Treasurer on warrants issued by the
793 Comptroller upon written request signed by the Director.

794 **Drafting note: Provisions in existing § 45.1-161.58 relating to fee collection and**
795 **fund expenditures are retained as proposed § 45.2-xxx [previous section] with the**
796 **nonreverting fund language for the Coal Mine Operator License Fund updated to reflect**
797 **current language requested by the Department of the Treasury for nonreverting funds in**
798 **the Code.**

799 § 45.1-161.59 45.2-xxx. Application for license for the operation of a coal mine.

800 A. An application for a license for the operation of a coal mine shall be submitted by
801 the person who will be the operator of the mine. No application for a license or a renewal thereof
802 shall be considered complete unless it contains the following:

803 1. ~~Identity regarding~~ The identity of the operator of the mine.

804 a. If the operator is a sole proprietorship, the operator shall state: (i) his full name and
805 address; (ii) the name and address of the mine and its federal mine identification number; (iii)
806 the name and address of the person with overall responsibility for operating decisions at the
807 mine; (iv) the name and address of the person with overall responsibility for health and safety
808 at the mine; (v) the federal mine identification numbers of all other mines in which the sole
809 proprietor has a ~~twenty~~ 20 percent or greater ownership interest; and (vi) the trade name, if any,
810 and the full name, address of record, and telephone number of the proprietorship.

811 b. If the operator is a partnership, the operator shall state: (i) the name and address of
812 the mine and its federal mine identification number; (ii) the name and address of the person
813 with overall responsibility for operating decisions at the mine; (iii) the name and address of the
814 person with overall responsibility for health and safety at the mine; (iv) the federal mine
815 identification numbers of all other mines in which the partnership has a ~~twenty~~ 20 percent or
816 greater ownership interest; (v) the ~~full name~~ names and ~~address~~ addresses of all partners; (vi)
817 the trade name, if any, and the full name and address of record and telephone number of the
818 partnership; and (vii) the federal mine identification numbers of all other mines in which any
819 partner has a ~~twenty~~ 20 percent or greater ownership interest.

820 c. If the operator is a corporation, the operator shall state: (i) the name and address of
821 the mine and its federal mine identification number; (ii) the name and address of the person
822 with overall responsibility for operating decisions at the mine; (iii) the name and address of the
823 person with overall responsibility for health and safety at the mine; (iv) the federal mine
824 identification numbers of all other mines in which the corporation has a ~~twenty~~ 20 percent or
825 greater ownership interest; (v) the full name, address of record, and telephone number of the
826 corporation and the state of incorporation; (vi) the full name and address of each officer and
827 director of the corporation; (vii) ~~if the corporation is a subsidiary corporation, the operator shall~~

828 state the full name, address, and state of incorporation of the parent corporation if the
829 corporation is a subsidiary corporation; and (viii) the federal mine identification numbers of all
830 other mines in which any corporate officer has a ~~twenty~~ 20 percent or greater ownership interest.

831 d. If the operator is any organization other than a sole proprietorship, partnership, or
832 corporation, the operator shall state: (i) the nature and type, or legal identity of the organization;
833 (ii) the name and address of the mine and its federal mine identification number; (iii) the name
834 and address of the person with overall responsibility for operating decisions at the mine; (iv)
835 the name and address of the person with overall responsibility for health and safety at the mine;
836 (v) the federal mine identification numbers of all other mines in which the organization has a
837 ~~twenty~~ 20 percent or greater ownership interest; (vi) the full name, address of record, and
838 telephone number of the organization; (vii) the name and address of each individual who has
839 an ownership interest in the organization; (viii) the ~~name~~ names and ~~address~~ addresses of the
840 principal organization officials or members; and (ix) the federal mine identification numbers of
841 all other mines in which any official or member has a ~~twenty~~ 20 percent or greater ownership
842 interest;

843 2. The ~~names~~ name and ~~addresses~~ address of any agent of the operator with
844 responsibility for the business operation of the mine, and of any person with an ownership or
845 leasehold interest in the coal to be mined;

846 3. The names and addresses of persons to be contacted in the event of an accident or
847 other emergency at the mine;

848 4. Such information required by the Department that is relevant to an assessment of the
849 safety and health risks likely to be associated with the operation of the mine; and

850 ~~5, 6. [Repealed.]~~

851 ~~7-5.~~ For any license renewal, the annual report required pursuant to § ~~45.1-161.62~~ 45.2-
852 xxx. When no change has occurred to the information required by subdivision 1, 2, or 3 ~~of this~~
853 ~~subsection~~, the operator of the mine shall only be required to certify that such information on
854 the current license application is accurate and complete.

855 B. The application shall be certified as being ~~complete~~ accurate and ~~accurate~~ complete
856 by the applicant, if an individual, or by the agent of a corporate applicant, or by a general partner
857 of an applicant that is a partnership. The application shall be submitted on forms furnished or
858 approved by the Department.

859 C. Within ~~thirty~~ 30 days after the occurrence of any change in the information required
860 by subsection A, the operator shall notify the Department, in writing, of such change.

861 **Drafting note: Technical changes.**

862 ~~§ 45.1-161.60~~ 45.2-xxx. Denial or revocation of license for the operation of a coal mine.

863 A. The Chief may ~~deny an application for, or may~~ revoke a license for the operation of
864 a coal mine or deny an application for the issuance of a license for the operation of a coal mine
865 upon determining that the applicant, the operator, or ~~his~~ the operator's agent has committed
866 violations of the mine safety laws of the Commonwealth ~~which, including rules and regulations~~
867 adopted by the Department or the Board of Coal Mining Examiners, that demonstrate a pattern
868 of willful violations resulting in an imminent danger to miners.

869 B. The Chief may revoke every license issued to any person for the operation of a coal
870 mine and may deny every application by a person for the issuance of a license for the operation
871 of a coal mine who has been convicted of knowingly permitting a miner to work in an
872 underground coal mine where a methane monitor or other device capable of detecting the
873 presence of explosive gases was impaired, disturbed, disconnected, bypassed, or otherwise
874 tampered with in violation of ~~§ 45.1-161.233~~ 45.2-xxx.

875 C. The Chief may revoke every license issued to any person for the operation of a coal
876 mine and may deny every application by a person for the issuance of a license for the operation
877 of a coal mine who has been convicted of violating subsection A of ~~§ 45.1-161.177~~ 45.2-xxx
878 or ~~§ 45.1-161.178~~ 45.2-xxx.

879 D. Any person whose license application is denied or whose license is revoked pursuant
880 to subsection A, B, or C may bring a civil action in the circuit court of the city or county in
881 which the mine is located for review of the decision. The commencement of such a proceeding
882 shall not, unless specifically ordered by the court, operate as a stay of the decision. The court

883 shall promptly hear and determine the matters raised by the aggrieved party. In any such action,
884 the court shall receive the records of the Department with respect to the determination, and shall
885 receive additional evidence at the request of any party. The court, basing its decision on the
886 preponderance of the evidence, shall grant such relief as the court determines appropriate.

887 **Drafting note: Technical changes are made, including changes that make the form**
888 **of subsection A parallel to that of subsections B and C.**

889 ~~§ 45.1-161.61~~ 45.2-xxx. Operating without license; penalty.

890 A. In addition to any other power conferred by law, the Chief, or his designated
891 representative, shall have the authority to issue an order closing any coal mine ~~which~~ that is
892 operating without a license. The procedure for issuing a closure order shall be as provided in §
893 ~~45.1-161.91~~ 45.2-xxx.

894 B. Any person operating an unlicensed mine ~~shall, upon conviction, be~~ is guilty of a
895 Class 3 misdemeanor. Each day any person operates an unlicensed mine shall constitute a
896 separate offense.

897 **Drafting note: Technical changes.**

898 ~~§ 45.1-161.62~~ 45.2-xxx. Annual reports; condition to issuance of license following
899 transfer of ownership.

900 A. The operator ~~or his agent~~ of ~~every~~ each mine ~~or his agent~~ shall annually, by February
901 15, mail or deliver to the Department a report for the preceding ~~twelve~~ 12 months, ending with
902 December 31. Such report shall state: (i) the names of the operator, any agent, and ~~their~~ any
903 officers, of the mine; (ii) the ~~quantity~~ amount of coal mined; and (iii) such other information,
904 not of a private nature, as may from time to time be required by the Department on ~~blank~~ forms
905 furnished or approved by the Department.

906 B. Whenever the owner of a mine ~~shall transfer~~ transfers the ownership of such mine to
907 another person, the person transferring such ownership shall submit a report to the Department
908 of such change and a statement of the tons of coal produced since the January 1 previous to the
909 date of such sale or transfer of such mine. A license ~~will~~ shall not be issued covering such
910 transfer of ownership until the report is furnished.

911 C. The operator ~~or his agent of every~~ each coal mine or his agent shall annually, by
912 February 15, mail or deliver to the Department (i) an affidavit, certified by the ~~Commissioner~~
913 ~~of Revenue~~ commissioner of the revenue of the locality in which the coal mining operations are
914 conducted, stating that all local coal severance taxes enacted pursuant to §§ 58.1-3703, 58.1-
915 3712, 58.1-3713, and 58.1-3741 due with respect to the coal mining operations have been paid;
916 and (ii) an affidavit, certified by the Treasurer of the locality in which the coal mining operations
917 are conducted, stating that all personal property, real estate, and mineral land taxes due with
918 respect to coal mining operations have been paid.

919 **Drafting note: Technical changes are made, including the reconfiguration of the**
920 **phrase "operator or his agent of every mine" to be consistent with language in existing §**
921 **45.1-161.14.**

922 ~~§ 45.1-161.63~~ 45.2-xxx. Notices Discontinuance of the working of a mine; notices to
923 Department; resumption of mining following discontinuance.

924 A. The operator or his agent shall send notice of his intent to discontinue the working
925 of an underground coal mine for a period of 30 days or a surface mine for a period of 60 days
926 to the Department at least 10 days prior to discontinuing the working of a mine with such intent,
927 or at any time a mine becomes an inactive mine. Unless examinations of the mine are being
928 conducted during the period of discontinued use, all surface openings to the discontinued
929 underground coal mine shall be secured against unauthorized entrance when the activities are
930 discontinued for 30 days or longer. Danger signs shall be posted at each secured entrance.

931 B. The operator, or his agent, shall send to the Department 10 days' prior notice of intent
932 to resume the working of an inactive mine. The production of coal at such mine shall not resume
933 until a mine inspector has inspected and approved it for resumption of production activities.

934 C. Emergency actions necessary to preserve a mine may be undertaken without the prior
935 notice of intent and advance inspection required by subsection B. In such event, a mine foreman
936 shall examine a mine for hazardous conditions immediately before miners are permitted to
937 work. The operator, or his agent, shall notify the Department as soon as possible after
938 commencing emergency action necessary to preserve the mine.

939 D. The operator, or his agent, shall send to the Department 10 days' prior notice of any
940 change in the name of a mine or in the name of the operator of a mine.

941 E. The operator, or his agent, shall send to the Department 10 days' prior notice of the
942 opening of a new mine.

943 F. Any notice required by this section shall be in writing and shall include the name of
944 the mine, the location of the mine, the name of the operator, and the operator's mailing address
945 and email address.

946 **Drafting note: Catchline is changed to better reflect the content of the section.**
947 **"Email address" is added to the information included on notice required by this proposed**
948 **section. Technical changes are made.**

949 ~~§ 45.1-161.64~~ 45.2-xxx. Maps of mines required to be made; contents; extension and
950 preservation; use by Department; release; posting of map.

951 A. Prior to commencing mining activity, the operator of a coal mine, or his agent, shall
952 make, or cause to be made, unless already made and filed, an accurate map of such mine. Such
953 map shall be submitted to the Chief prior to producing coal at the mine. All maps shall be
954 presented on the Virginia Coordinate System of 1983, South Zone, unless otherwise approved
955 by the Chief. At intervals not to exceed 12 months and when a coal mine is abandoned, the
956 operator shall submit to the Chief copies of an up-to-date map of the entire mine in an electronic
957 format approved by the Chief. The operator shall also submit to the Chief revisions that show
958 directional changes whenever mine projections deviate more than 600 feet from the approved
959 mine map. Only maps in an electronic format ~~will~~ shall be accepted unless otherwise approved
960 by the Chief. If there are no changes in the information required to be submitted ~~under~~ pursuant
961 to this section at the time an updated map is due, the operator may submit a notice that there
962 are no changes to the map in lieu of submitting an updated map to the Department.

963 B. Underground coal mine maps shall show:

964 1. The active workings;

965 2. All pillared, worked out, and abandoned areas, except as provided in this section;

- 966 3. Entries and aircourses with the quantity of airflow, direction of airflow indicated by
967 arrows, and ventilation controls;
- 968 4. Contour lines of all elevations;
- 969 5. Dip of the coalbed;
- 970 6. Escapeways;
- 971 7. The locations that are known or should be known of (i) adjacent mine workings within
972 1,000 feet, (ii) mines above or below, and (iii) water pools above;
- 973 8. Either producing or abandoned oil and gas wells located within 500 feet of such mine
974 and in any underground area of such mine; and
- 975 9. Such other information as the Chief may require.

976 Such map shall identify those areas of the mine ~~which~~ that have been pillared, worked
977 out, or abandoned, ~~which~~ that are inaccessible, or that cannot be entered safely.

978 C. Additional information required to be shown on underground coal mine maps shall
979 include:

- 980 1. ~~Mine~~ The mine name, company name, mine index number, and name of the person
981 responsible for information on the map;
- 982 2. The scale and orientation of the map and symbols used on the map;
- 983 3. The property or boundary lines of the mine;
- 984 4. All known drill holes that penetrate the coalbed being mined;
- 985 5. All shaft, slope, drift, and tunnel openings and auger and strip mined areas of the
986 coalbed being mined;
- 987 6. The location of all surface mine ventilation fans; ~~the~~ The location may be designated
988 on the mine map by symbols;
- 989 7. The location of railroad tracks and public highways leading to the mine, and mine
990 buildings of a permanent nature with identifying names shown;
- 991 8. The location and description of a least two permanent base line points coordinated
992 with the underground and surface mine traverses, and the location and description of at least

993 two permanent elevation bench marks used in connection with establishing or referencing mine
994 elevation surveys;

995 9. The location and elevation of any body of water dammed or held back in any portion
996 of the mine; ~~provided~~, however, such bodies of water may be shown on overlays or tracings
997 attached to the mine maps used to show contour lines as provided under subdivision 12;

998 10. The elevations of tops and bottoms of shafts and slopes, and the floor at the entrance
999 to drift and tunnel openings;

1000 11. The elevation of the floor at intervals of not more than 200 feet in (i) at least one
1001 entry of each working section and main and cross entries; (ii) the last line of open crosscuts of
1002 each working section, and main and cross entries before such sections and main and cross
1003 entries that are abandoned; and (iii) rooms advancing toward or adjacent to property or
1004 boundary lines or adjacent mines; and

1005 12. Contour lines passing through whole number elevations of the coalbed being mined.
1006 The spacing of such lines shall not exceed 10-foot elevation levels, except that a broader spacing
1007 of contour lines may be approved by the Chief for ~~steeply pitching~~ steeply pitching coalbeds.
1008 Contour lines may be placed on overlays or tracings attached to mine maps.

1009 D. Underground coal mine maps submitted to the Chief shall be on a scale of not less
1010 than 100 or more than 500 feet to the inch. Mapping of the underground mine works shall be
1011 completed by a closed loop survey method of traversing or other equally accurate methods of
1012 traversing. All closed loop surveys shall meet a minimum accuracy standard of one part in
1013 5,000. Elevations shall be tied to either the United States Geological Survey or the ~~United States~~
1014 ~~Coast and~~ National Geodetic Survey ~~benchmark~~ bench mark system. A registered engineer or
1015 licensed land surveyor shall certify that the map of the mine workings is accurate.

1016 E. Underground coal mine maps shall be kept up-to-date by temporary notations and
1017 revised and supplemented at intervals not to exceed six months based on a survey made and
1018 certified by a registered engineer or licensed land surveyor who has exercised complete
1019 direction and control over the work to which it is affixed. Temporary notations shall include:

1020 1. The location of each working face of each working place;

- 1021 2. Pillars mined or other such second mining;
- 1022 3. Permanent ventilation controls constructed or removed, such as seals, overcasts,
1023 undercasts, regulators, and permanent stoppings, and the direction of air currents indicated; and
1024 4. Escapeways designated by means of symbols.
- 1025 F. At underground coal mines, an accurate map of the mine showing clearly all avenues
1026 of ingress and egress in case of fire shall be posted in a place accessible to all miners.
- 1027 G. Surface coal mine maps shall show:
- 1028 1. ~~Name~~ The name and address of the mine;
- 1029 2. The property or boundary lines of the active areas of the mine;
- 1030 3. Contour lines passing through whole number elevations of the coalbed being mined.
1031 The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader spacing
1032 of contour lines may be approved by the Chief for steeply pitching coalbeds. The Chief may
1033 approve alternate means of delineating seam elevations where multiple seams are being mined.
1034 Contour lines may be placed on overlays or tracings attached to mine maps;
- 1035 4. The general elevation of the coalbed or coalbeds being mined; and the general
1036 elevation of the surface;
- 1037 5. Either producing or abandoned oil and gas wells and gas transmission lines located
1038 on the mine property;
- 1039 6. The location and elevation of any body of water dammed or held back in any portion
1040 of the mine; provided, however, ~~that such bodies~~ body of water may be shown on overlays or
1041 tracings attached to the mine maps;
- 1042 7. All prospect drill holes that penetrate the coalbed or coalbeds being mined on the
1043 mine property;
- 1044 8. All auger and surface mined areas of the coalbed or coalbeds being mined on the mine
1045 property together with the line of maximum depth of holes drilled during auger mining
1046 operations;
- 1047 9. All worked out and abandoned areas;

1048 10. The location of railroad tracks and public highways leading to the mine, and mine
1049 buildings of a permanent nature with identifying names shown;

1050 11. Underground coal mine workings underlying and within 1,000 feet of the active
1051 areas of the mine;

1052 12. The location and description of at least two permanent baseline points, and the
1053 location and description of at least two permanent elevation bench marks used in connection
1054 with establishing or referencing mine elevation surveys;

1055 13. The scale of the map; and

1056 14. Such other information required by the Chief.

1057 H. Surface coal mine maps shall be kept up to date by temporary notations and revised
1058 and supplemented at intervals not to exceed six months based on a survey made and certified
1059 by a registered engineer or licensed land surveyor who has exercised complete direction and
1060 control over the work to which it is affixed. Temporary notations shall include:

1061 1. The location of each working pit ~~or pits~~;

1062 2. Auger or highwall miner workings; and

1063 3. Other information that may affect the safety of miners, including, ~~but not limited to,~~
1064 updates of gas well or gas line locations.

1065 I. Surface surveys shall originate from at least two permanent survey monuments on the
1066 mine property located with a minimum accuracy standard of one part in 10,000. The monuments
1067 shall be clearly referenced on the mine map. Elevations shall be tied to either the United States
1068 Geological Survey or the ~~United States Coast and~~ National Geodetic benchmark Survey bench
1069 mark system.

1070 J. The original map, or a true copy thereof, shall be left by the operator at the active
1071 mine, open at all reasonable times for the examinations and use of the mine inspector.

1072 K. Such maps may be used by the Department for the evaluation of the coal resources
1073 of the Commonwealth.

1074 L. The map shall be filed and preserved among the records of the Department and copies
1075 of such maps shall be made available at a reasonable cost.

1076 M. Any person who has conducted mining operations or prepared mine maps and who
1077 has a map or surveying data of any worked out or abandoned underground coal mine shall on
1078 request make such map or data available to the Department to copy or reproduce such material.

1079 **Drafting note: In subsections D and I, the name of the United States Coast and**
1080 **Geodetic Survey is updated to its current name: the National Geodetic Survey. In**
1081 **subdivision H 1, language is removed pursuant to § 1-227, which states that throughout**
1082 **the Code any word used in the singular includes the plural and vice versa. In subdivision**
1083 **H 3, the phrase "but not limited to" is removed pursuant to § 1-218, which states that**
1084 **throughout the Code "'Includes' means includes, but not limited to." Technical changes**
1085 **are made.**

1086 ~~§ 45.1-161.65~~ 45.2-xxx. When the Chief may cause maps to be made; payment of
1087 expense by operator.

1088 If the operator, ~~or his agent,~~ of any mine ~~shall neglect or his agent neglects or fail fails~~
1089 to furnish to the Chief a copy of any map or extension thereof, as provided in ~~§ 45.1-161.64~~
1090 45.2-xxx, the Chief is authorized to cause a correct survey and map of ~~said~~ such mine, or
1091 extension ~~thereof of the map,~~ to be made at the expense of the operator of ~~such~~ the mine, the
1092 cost of which shall be recovered from the operator as other debts are recoverable by a civil
1093 action at law. If at any time the Chief has reason to believe that such map, or ~~extensions~~
1094 extension thereof, furnished pursuant to ~~§ 45.1-161.64~~ 45.2-xxx is substantially incorrect, or
1095 will not serve the purpose for which it is intended, he may have a survey and map or extension
1096 thereof made, or corrected. The expense of making such survey and map or extension thereof
1097 shall be paid by the operator. The expense shall be recovered from the operator as other debts
1098 are recoverable by a civil action at law. However, if the map filed by the operator is found to
1099 be substantially correct, the expense shall be paid by the Commonwealth.

1100 **Drafting note: Technical changes are made, including the reconfiguration of the**
1101 **phrase "operator or his agent of any mine" to be consistent with language in existing §**
1102 **45.1-161.14.**

1103 ~~§ 45.1-161.66~~ 45.2-xxx. Making false statements; penalty.

1104 A. It ~~shall be~~ is unlawful for any person charged with the making of maps or other data
1105 to be furnished as provided in ~~this~~ the Act to fail to correctly show, within the limits of error,
1106 the data required.

1107 B. Any person who knowingly makes any false statement, representation, or
1108 certification in any application, record, report, plan, or other document filed or required to be
1109 maintained under ~~this~~ the Act ~~shall, upon conviction, be~~ is guilty of a Class 1 misdemeanor.

1110 **Drafting note: Technical changes.**

1111 Article ~~6~~ 5.

1112 ~~Rescue Crews;~~ Mine Rescue Teams.

1113 **Drafting note: Existing Article 6, relating to mine rescue teams, is retained as**
1114 **Article 5. The title is changed to better reflect the terminology used in the article.**

1115 § ~~45.1-161.67~~ 45.2-xxx. Mine rescue and first aid stations.

1116 The Director is hereby authorized to purchase, equip, and operate for the use of the
1117 Department, such mine rescue and first aid stations as he may determine necessary for the
1118 adequate provision of mine rescue and recovery services at all mines in the Commonwealth.

1119 **Drafting note: Technical changes.**

1120 § ~~45.1-161.68~~ 45.2-xxx. Mine rescue ~~crews~~ teams.

1121 The Director is ~~hereby~~ authorized to have trained and employed at the mine rescue and
1122 first aid stations operated by the Department ~~within the Commonwealth~~ mine rescue ~~crews~~
1123 teams as he may determine necessary. Each member of a mine rescue ~~crew~~ team shall devote
1124 four hours each month for training purposes and shall be available at all times to assist in rescue
1125 work. Members shall receive compensation for services at a rate set by the Director, to be
1126 determined annually based on prevailing wage rates within the industry. For the purposes of
1127 workers' compensation coverage during training periods, such ~~crew~~ team members shall be
1128 deemed to be within the scope of their regular employment. The Director shall certify to the
1129 Comptroller of the Commonwealth that such ~~crew~~ team members have performed the required
1130 service. Upon such certification, the Comptroller shall issue a warrant upon the state treasury
1131 for their compensation. The Director may remove any ~~crew~~ team member at any time.

1132 **Drafting note: "Mine rescue crew" is replaced with the term currently in use,**
1133 **"mine rescue team." Technical changes are made.**

1134 § ~~45.1-161.69~~ 45.2-xxx. Duty to train ~~crew~~ team.

1135 It ~~shall be~~ is the duty and responsibility of the Department to see that all ~~crews~~ be teams
1136 are properly trained by a qualified instructor of the Department or such other ~~persons~~ person
1137 who ~~have~~ has a certificate of training from the Department or the federal Mine Safety and
1138 Health Administration.

1139 **Drafting note: "Mine rescue crew" is replaced with the term currently in use,**
1140 **"mine rescue team." Technical changes are made.**

1141 § ~~45.1-161.70~~ 45.2-xxx. Qualification for ~~crew~~ team membership; direction of ~~crews~~
1142 teams.

1143 A. To qualify for membership in a mine rescue ~~crews~~ team, an applicant shall be an
1144 experienced miner and shall pass a physical examination by a licensed physician, physician
1145 assistant, or licensed nurse practitioner at least annually. A record that such examination was
1146 taken shall be kept on file by the operator who employs the ~~crew members~~ team member and a
1147 copy shall be furnished to the Director.

1148 B. All rescue or recovery work performed by these ~~crews~~ teams shall be under the
1149 jurisdiction of the Department. The Department shall consult with company officials,
1150 representatives of the federal Mine Safety and Health Administration, and representatives of
1151 the miners, and all ~~should~~ shall be in agreement as far as possible on the proper procedure for
1152 rescue and recovery; however, the Chief in his discretion may take full responsibility in
1153 directing such work. Procedures for use of apparatus or equipment shall be guided by the mine
1154 rescue apparatus and auxiliary equipment manuals.

1155 **Drafting note: "Mine rescue crew" is replaced with the term currently in use,**
1156 **"mine rescue team." Technical changes are made pursuant to § 1-227, which states that**
1157 **throughout the Code any word used in the singular includes the plural and vice versa.**

1158 § ~~45.1-161.71~~ Crew 45.2-xxx. Team members to be considered employees of the mine
1159 where emergency exists; compensation; workers' compensation.

1160 When engaged in rescue or recovery work during an emergency at a mine, all ~~crew team~~
1161 members assigned to the work shall be considered, during the period of their work, employees
1162 of the mine where the emergency exists and shall be compensated by the operator at the rate
1163 established in the area for such work. In no event shall this rate be less than the prevailing wage
1164 rate in the industry for the most skilled class of inside mine labor. During the period of their
1165 emergency employment, all ~~crew team~~ members shall be deemed to be within the employment
1166 of the operator of the mine for the purpose of workers' compensation coverage.

1167 **Drafting note: "Mine rescue crew" is replaced with the term currently in use,**
1168 **"mine rescue team."**

1169 ~~§ 45.1-161.72~~ 45.2-xxx. Requirements of recovery work.

1170 A. During recovery work and prior to entering any mine, all mine rescue ~~crews~~ teams
1171 conducting recovery work shall be properly informed of existing conditions by the operator or
1172 his agent in charge.

1173 B. Each mine rescue ~~crew team~~ performing rescue or recovery work with breathing
1174 apparatus shall be provided with a backup ~~crew team~~ of equal strength, stationed at each fresh
1175 air base.

1176 C. For every two ~~crews~~ teams performing work underground, one six-member ~~crew~~
1177 team shall be stationed at the mine portal.

1178 D. Two-way communication, life lines, or their equivalent, shall be provided by the
1179 fresh air base to all ~~crews~~ teams, and no ~~crew team~~ member shall be permitted to advance
1180 beyond such communication system.

1181 E. A mine rescue ~~crew team~~ shall immediately return to the fresh air base ~~should if any~~
1182 ~~crew team~~ member's breathing apparatus ~~malfunction~~ malfunctions or the ~~atmospheric pressure~~
1183 ~~of any apparatus deplete to sixty 60 atmospheres~~ low-oxygen alarm activates.

1184 F. The Director may also assign rescue and recovery work to inspectors, instructors, or
1185 other qualified employees of the Department as the Director may determine desirable.

1186 **Drafting note: "Mine rescue crew" is replaced with the term currently in use,**
1187 **"mine rescue team," and a reference to the depletion of the atmospheric pressure of a**

1188 **breathing apparatus is replaced with a reference to the safety standard currently in use,**
1189 **a low-oxygen alarm. Language is updated for modern usage.**

1190 § ~~45.1-161.73~~ 45.2-xxx. State-designated mine rescue teams.

1191 The Director may, upon the request of an operator or agent who employs a mine rescue
1192 team, designate two or more mine rescue teams as "state-designated mine rescue teams." Any
1193 team ~~which~~ that is certified as a mine rescue team by the federal Mine Safety and Health
1194 Administration under ~~30-CFR~~ C.F.R. Part 49 shall be eligible to be a state-designated mine
1195 rescue team. Following the designation of any such teams, the Director shall, upon the payment
1196 to the Department of an annual fee, set by the Director based on current costs for maintaining
1197 mine rescue stations and personnel, assign two or more state-designated mine rescue teams to
1198 the operator. An operator who has paid the rescue fee ~~shall be~~ is entitled to the rescue services
1199 of a state-designated mine rescue team at no additional charge.

1200 **Drafting note: Technical changes.**

1201 § ~~45.1-161.74~~ 45.2-xxx. Mine Rescue Fund.

1202 The Mine Rescue Fund, referred to in this section as "the Fund," is hereby created as a
1203 special nonreverting fund in the ~~office of the State Treasurer~~ state treasury. The Fund shall be
1204 established on the books of the Comptroller. All moneys collected from operators pursuant to
1205 agreements entered into by the Director shall be paid into the ~~Mine Rescue~~ state treasury and
1206 credited to the Fund. Moneys in the ~~Mine Rescue~~ Fund shall be used only for mine rescue
1207 services under such agreements. ~~No~~ Interest earned on moneys in the Fund shall remain in the
1208 Fund and be credited to it. Any moneys remaining in the Mine Rescue Fund, including interest
1209 thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the
1210 Fund.

1211 **Drafting note: The Mine Rescue Fund statute is updated to reflect current**
1212 **language requested by the Department of the Treasury for nonreverting funds in the**
1213 **Code.**

1214 § ~~45.1-161.75~~ 45.2-xxx. Inspections; Mine Rescue Coordinator.

1215 A. The Director shall (i) inspect, or cause to be inspected, the rescue station of each
1216 state-designated mine rescue team four times a year;² (ii) ensure that all rescue stations are
1217 adequately equipped;² and (iii) ensure that all team members are adequately trained.

1218 B. The Director shall designate an employee of the Department as the Mine Rescue
1219 Coordinator, who shall perform the duties assigned to him by the Director.

1220 **Drafting note: Technical changes.**

1221 ~~§ 45.1-161.76~~ 45.2-xxx. Workers' compensation; liability.

1222 A. For the purpose of workers' compensation coverage, during any mine disaster to
1223 which a state-designated mine rescue team responds under the provisions of this article or
1224 during any training exercise for a state-designated mine rescue team, members of the state-
1225 designated team shall be deemed to be within the employment of the operator of the mine at
1226 which the disaster occurred or the training exercise is conducted. Additionally, for purposes of
1227 workers' compensation coverage, travel by members of a state-designated mine rescue team to
1228 and from the mine disaster or training exercise shall be deemed to be within the employment of
1229 the operator of the mine at which the disaster occurred or the training exercise is ~~to be or was~~
1230 conducted.

1231 B. Any member of a state-designated mine rescue team engaging in rescue work at a
1232 mine shall not be liable for civil damages for acts or omissions resulting from the rendering of
1233 such rescue work unless the act or omission was the result of gross negligence or willful
1234 misconduct.

1235 C. Any operator providing personnel to a state-designated mine rescue team to engage
1236 in rescue work at a mine not owned or operated by the operator shall not be liable for any civil
1237 damages for acts or omissions resulting from the rendering of such rescue work.

1238 **Drafting note: Technical changes.**

1239 ~~Article 7~~ 6.

1240 Mine Explosions; Mine Fires; Accidents.

1241 **Drafting note: Existing Article 7, relating to mine explosions, mine fires, and**
1242 **accidents, is retained as proposed Article 6.**

1243 § ~~45.1-161.77~~ 45.2-xxx. Reports of explosions and mine fires; procedure.

1244 A. If an explosion or mine fire occurs in a mine, the operator shall notify the Department
1245 by the quickest available means. All facilities of the mine shall be made available for rescue
1246 and recovery operations and firefighting.

1247 B. No work other than rescue and recovery work and firefighting ~~may~~ shall be attempted
1248 ~~or started until and unless it is~~ authorized by the Department.

1249 C. If an explosion occurs in an underground coal mine, the fan shall not be reversed
1250 except by authority of the officials in charge of rescue and recovery work, and then only after
1251 a study of the effect of reversing the fan on any ~~persons~~ person who may have survived the
1252 explosion and ~~are~~ is still underground.

1253 D. The Department shall make available all the facilities at its disposal in effecting
1254 rescue and recovery work. The Chief shall act as consultant, or take personal charge, where in
1255 his opinion the circumstances of any mine explosion, fire, or other accident warrant.

1256 E. The orders of the official in charge of rescue and recovery work shall be respected
1257 and obeyed by all persons engaged in rescue and recovery work.

1258 F. The Chief shall maintain an up-to-date rescue and recovery plan for prompt and
1259 adequate employment at any coal mine in the Commonwealth. All employees of the Department
1260 shall be kept fully informed and trained in their respective duties in executing rescue and
1261 recovery plans. The Department's plan shall be reviewed annually. Any changes in the plan
1262 shall be published promptly and made available to all operators of mines.

1263 **Drafting note: Technical changes are made, including the replacement of "may"**
1264 **with "shall" in a directive provision in subsection B, the deletion of redundant elements**
1265 **from the phrases "attempted or started" and "until and unless" in subsection B, and the**
1266 **change of plural construction to singular in subsection C pursuant to § 1-227, which states**
1267 **that throughout the Code any word used in the singular includes the plural and vice versa.**

1268 § ~~45.1-161.78~~ 45.2-xxx. Operators' reports of accidents; investigations; reports by
1269 Department.

1270 A. Each operator ~~will~~ shall report promptly to the Department the occurrence at any
1271 mine of any accident. The scene of the accident shall not be disturbed pending an investigation,
1272 except to the extent necessary to rescue or recover a person, prevent or eliminate an imminent
1273 danger, prevent destruction of mining equipment, or prevent suspension of use of a slope, entry,
1274 or facility vital to the operation of a section or a mine. In cases where reasonable doubt exists
1275 as to whether to leave the scene unchanged, the operator ~~will~~ shall secure prior approval from
1276 the Department before any changes are made.

1277 B. The Chief ~~will~~ shall go personally or dispatch one or more mine inspectors to the
1278 scene of such a coal mine accident, investigate causes, and issue such orders as may be needed
1279 to ensure safety of other persons.

1280 C. Representatives of the operator ~~will~~ shall render such assistance as may be needed
1281 and act in a consulting capacity in the investigation. An employee₂ if so designated by the
1282 employees of the mine ~~will~~, shall be notified, and as many as three employees₂ if so designated
1283 as representatives of the employees₂ may be present at the investigation in a consulting capacity.

1284 D. The Chief shall require substance abuse testing as part of an inspection or complaint
1285 investigation if there is reasonable cause to suspect a miner's impairment, due to the presence
1286 of intoxicants or any controlled substance not used in accordance with the prescription of a
1287 licensed prescriber, ~~or~~ has been a contributing factor to any accident in which a serious personal
1288 injury or death ~~occurs~~ has occurred at a mine. The Chief shall require substance abuse testing
1289 of any miner killed or seriously injured and of any other person who may have contributed to
1290 the accident. Any substance abuse testing required by the Chief ~~will~~ shall be paid for by the
1291 Department. Refusal by any miner to submit to substance abuse testing, or the failure to pass
1292 such a test, shall result in the immediate temporary suspension of all certificates, pending a
1293 hearing before the Board of Coal Mining Examiners.

1294 E. The Department ~~will~~ shall render a complete report of circumstances and causes of
1295 each accident investigated, and make recommendations for the prevention of similar accidents.
1296 The Department ~~will~~ shall furnish one copy of the report to the operator, and one copy to ~~the~~
1297 an employee representative ~~when he has been~~ if one was present at the investigation. The Chief

1298 shall maintain a complete file of all accident reports for coal mines, and ~~shall give such~~ provide
1299 ~~further publicity dissemination~~ as may be ordered by the Director in an effort to prevent mine
1300 accidents.

1301 **Drafting note: Technical changes are made, including the replacement of "will"**
1302 **with "shall" in directive provisions throughout the section.**

1303 § ~~45.1-161.79~~ 45.2-xxx. Reports of other accidents and injuries.

1304 A. Each miner employed at a mine shall promptly notify his supervisor of any injury
1305 received during the course of his employment.

1306 B. Each operator shall keep on file a report of each accident, including any accident
1307 ~~which that~~ does not result in a lost-time injury. Copies of ~~such an accident~~ report shall be given
1308 to the person injured or to his designated representative to review ~~the accident~~ such report and
1309 verify its accuracy prior to filing ~~such report~~ it for ~~the review of~~ by state or federal mine
1310 inspectors.

1311 **Drafting note: Technical changes.**

1312 § ~~45.1-161.80~~ 45.2-xxx. Duties of mine inspectors.

1313 Each mine inspector shall:

1314 1. Report to his supervisor immediately, ~~and~~ by the quickest available means; any mine
1315 ~~fire, mine or explosion, and or any accident involving that results in loss of life or serious~~
1316 ~~personal injury or death to his supervisor;~~

1317 2. Proceed immediately to the scene of any accident at any mine under his jurisdiction
1318 that results in loss of life or serious personal injury, and to the scene of any mine fire or
1319 explosion regardless of whether there is loss of life or serious personal injury. ~~He shall make;~~

1320 3. Make such investigation and suggestions and render such assistance as he deems
1321 necessary for the future safety of the employees, and make a complete report to his supervisor
1322 as soon as practicable; ~~and~~

1323 ~~3-4.~~ 4. Provide assistance to mine rescue and recovery operations whenever a mine fire,
1324 ~~mine or explosion, or other serious any accident that results in loss of life or serious personal~~
1325 injury occurs; ~~and shall monitor~~

1326 5. Monitor the reopening of all mines or sections thereof that have been sealed or
1327 abandoned on account of mine fire or explosion, serious accident, or any other cause in
1328 accordance with a plan approved by the Chief.

1329 **Drafting note: Language is updated for clarity and technical changes are made,**
1330 **including the clarification of the list of a mine inspector's duties.**

1331 Article ~~8~~ 7.

1332 Mine Inspections.

1333 **Drafting note: Existing Article 8, relating to mine inspections, is retained as**
1334 **proposed Article 7.**

1335 ~~§ 45.1-161.81~~ 45.2-xxx. Frequency of mine inspections.

1336 The Chief shall conduct a complete inspection of ~~every~~ each underground coal mine ~~not~~
1337 ~~less frequently than~~ at least every 180 days, and of ~~every~~ each surface coal mine ~~not less~~
1338 ~~frequently than~~ at least once per year. Additional inspections of coal mines shall be made when
1339 deemed appropriate by the Chief based on an evaluation of risks at each mine, or if requested
1340 by miners employed at a mine or the operator of a mine.

1341 **Drafting note: Technical changes.**

1342 ~~§ 45.1-161.82~~ 45.2-xxx. Evaluation of risks at mines.

1343 A. For the purpose of allocating the resources of the Department to be used for
1344 conducting additional inspections, the Department shall develop a procedural policy of
1345 scheduling such inspections based on an assessment, to be made ~~not less frequently than~~ at least
1346 annually, of the comparative risks at each underground coal mine and surface coal mine. The
1347 ~~Department's~~ Department shall prepare its procedural policy ~~shall be prepared~~ with the
1348 assistance of working groups consisting of persons knowledgeable in mine safety issues. The
1349 issuance of the procedural policy shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the
1350 Administrative Process Act. Variables to be included in the risk assessment measures shall
1351 include, ~~but not be limited to:~~ (i) fatality and serious accident rates at the mine; (ii) the rates of
1352 issuance of closure orders and notices of violations of the mine safety laws of the
1353 Commonwealth, including rules and regulations adopted by the Department or the Board of

1354 Coal Mining Examiners, at the mine; and (iii) the frequency rates for nonserious accidents or
1355 nonfatal days lost.

1356 B. The Chief shall schedule additional inspections at underground coal mines and
1357 surface coal mines based on the rating assigned to a mine reflecting the assessment of its risks
1358 compared to other such mines pursuant to the assessment described in subsection A.

1359 **Drafting note: Language is updated for clarity. In subsection A, the phrase "but**
1360 **not be limited to" is removed pursuant to § 1-218, which states that throughout the Code**
1361 **"'Includes' means includes, but not limited to." Technical changes are made.**

1362 ~~§ 45.1-161.83~~ 45.2-xxx. Review of inspection reports and records.

1363 Prior to commencing an inspection of a coal mine, a mine inspector shall review the
1364 most recent available report of inspection by the federal Mine Safety and Health
1365 Administration. During the course of a complete inspection of a coal mine, the mine inspector
1366 shall comprehensively review the records for the 30-day period preceding the inspection of pre-
1367 shift examinations, on-shift exams, daily inspections, and weekly examinations ~~which that~~ are
1368 required to be maintained pursuant to ~~this the~~ the Act, ~~for the 30-day period preceding the~~
1369 ~~inspection.~~ The mine inspector may, ~~but shall not be required to,~~ review the records for such
1370 additional period as he ~~may deem~~ deems prudent. ~~The~~ During the course of the inspection, the
1371 inspector shall review other records relating to safety and health conditions in the mine ~~which~~
1372 that are required to be maintained pursuant to ~~this the~~ the Act ~~during the course of the inspection.~~

1373 **Drafting note: Language is updated for clarity, including deletion of the redundant**
1374 **phrase "but shall not be required to" as it follows "may." Technical changes are made.**

1375 ~~§ 45.1-161.84~~ 45.2-xxx. Advance notice of inspections; confidentiality of trade secrets.

1376 A. No person shall give advance notice of any mine inspection conducted under the
1377 provisions of this title without authorization from the Chief or the Director.

1378 B. All information reported to or otherwise obtained by the Chief or the Director or his
1379 authorized representative in connection with any inspection or proceeding under this title ~~which~~
1380 that contains or might reveal a trade secret referred to in ~~§ 1905 of Title 18 of the United States~~
1381 Code U.S.C. § 1905 shall be considered confidential for the purpose of that section, except that

1382 such information may be disclosed to the Chief or the Director or his authorized representative
1383 concerned with carrying out any provisions of this title or any proceeding hereunder. In any
1384 such proceeding, the court, the Chief, or the Director shall issue such orders as may be
1385 appropriate to protect the confidentiality of trade secrets.

1386 **Drafting note: The authority of the Chief to allow advance notice of an inspection**
1387 **is specified in subsection A. Technical changes are made.**

1388 ~~§ 45.1-161.85~~ 45.2-xxx. Scheduling of mine inspections.

1389 A. The Chief and the Director shall schedule the inspections of mines under this article,
1390 to the extent deemed reasonable and prudent, in order to reduce their chronological proximity
1391 to inspections conducted by the federal Mine Safety and Health Administration.

1392 B. The Chief, ~~the~~ Director, and each mine ~~inspectors~~ inspector, to the extent deemed
1393 reasonable and prudent, shall schedule mine inspections to commence at a variety of hours of
1394 the day and days of the week, including evening and night shifts, weekends, and holidays.

1395 **Drafting note: Technical changes.**

1396 ~~§ 45.1-161.86~~ 45.2-xxx. Denial of entry.

1397 No person shall deny the Chief ~~or~~, the Director, ~~as applicable~~, or any mine inspector
1398 entry upon or through (i) a mine for the purpose of conducting an inspection or (ii) any office
1399 at the site where maps or records relating to the mine are located, ~~pursuant to this~~ in accordance
1400 with the Act.

1401 **Drafting note: Language is updated for clarity. Technical changes are made.**

1402 ~~§ 45.1-161.87~~ 45.2-xxx. Duties of operator.

1403 A. The operator, or his agent, of ~~every~~ each mine shall furnish the Chief and any mine
1404 ~~inspectors~~ inspector proper facilities for entering such mine and making examinations or
1405 obtaining information and shall furnish any data or information not of a confidential nature
1406 requested by such inspector or the Chief.

1407 B. The operator of an underground coal mine, or his agent, shall provide a mine
1408 inspector or the Chief adequate means for transportation to the active working areas of the mine
1409 within a reasonable period of time following the mine inspector's arrival at the mine.

1410 C. The operator or his agent shall, when ordered to do so by a mine inspector or the
1411 Chief during the course of his inspection, promptly clear the mine or a section thereof of all
1412 persons.

1413 D. The mine operator shall implement a substance abuse screening policy and program
1414 for all miners that shall, at a minimum, include:

1415 1. A pre-employment, 10-panel urine test for the following and any other substances as
1416 set out in regulation adopted by the Board of Coal Mining Examiners:

1417 a. Amphetamines;₂

1418 b. Cannabinoids/THC;₂

1419 c. Cocaine;₂

1420 d. Opiates;₂

1421 e. Phencyclidine (PCP);₂

1422 f. Benzodiazepines;₂

1423 g. Propoxyphene;₂

1424 h. Methadone;₂

1425 i. Barbiturates;₂ and

1426 j. Synthetic narcotics.

1427 Samples shall be collected by providers who are certified as complying with standards
1428 and procedures set out in the ~~United States~~ U.S. Department of Transportation's rule, 49 ~~CFR~~
1429 C.F.R. Part 40. Collected samples shall be tested by laboratories certified by the ~~United States~~
1430 ~~Department of Health and Human Services~~, Substance Abuse and Mental Health Services
1431 Administration (SAMHSA) of the U.S. Department of Health and Human Services for
1432 collection and testing. The mine operator may implement a more stringent substance abuse
1433 screening policy and program; and

1434 2. ~~Review~~ The review of the substance abuse screening program with ~~all miners~~ each
1435 miner at the time of employment and annually thereafter.

1436 E. The operator or his agent shall notify the Chief, on a form prescribed by the Chief,
1437 within seven days of any failure of a pre-employment substance abuse screening test and shall

1438 provide a record of the test showing such failure or violation. Notice shall result in the
1439 immediate temporary suspension of all certificates held by the applicant, pending a hearing
1440 before the Board of Coal Mining Examiners.

1441 F. The operator or his agent shall notify the Chief, on a form prescribed by the Chief,
1442 within seven days of (i) discharging a miner due to violation of the company's substance or
1443 alcohol abuse policies, (ii) a miner testing positive for intoxication while on duty status, or (iii)
1444 a miner testing positive as using any controlled substance without the prescription of a licensed
1445 prescriber. An operator ~~having~~ that has a substance abuse program shall not be required to notify
1446 the Chief under ~~subdivision~~ clause (iii) unless the miner having tested positive fails to complete
1447 the operator's substance abuse program. The notification shall be accompanied by a record of
1448 the test showing such positive results or violation. Notice shall result in the immediate
1449 temporary suspension of all certificates held by the applicant, pending a hearing before the
1450 Board of Coal Mining Examiners.

1451 G. The provisions of this chapter shall not be construed to preclude an employer from
1452 developing or maintaining a ~~drug~~ substance and alcohol abuse policy, testing program, or
1453 substance abuse program that exceeds the minimum requirements set forth in this section.

1454 **Drafting note: Authority of the Chief spelled out in subsections B and C to make**
1455 **those subsections parallel to subsection A. Technical changes are made.**

1456 ~~§ 45.1-161.88~~ 45.2-xxx. Duties of inspectors.

1457 A. During a complete inspection of a mine, other than an inactive mine, the mine
1458 inspector shall inspect, where applicable, the surface plant; all active workings; all active travel
1459 ways; entrances to inaccessible worked-out areas; accessible worked-out areas; at least one
1460 entry of each intake and return airway in its entirety; escapeways and other places where miners
1461 work or travel or where hazardous conditions may exist; electric installations and equipment;
1462 haulage facilities; ~~first aid~~ first aid equipment; ventilation facilities; communication
1463 installations; roof and rib conditions; roof-support practices; blasting practices; haulage
1464 practices and equipment; and any other condition, practice₂, or equipment pertaining to the
1465 health and safety of the miners. The mine inspector shall make tests for the quantity of air flows,

1466 and for gas and oxygen deficiency, in each place ~~which~~ that he is required to inspect in an
1467 underground coal mine. In mines operating more than one shift in a ~~twenty-four-hour~~ 24-hour
1468 period, the mine inspector shall devote sufficient time on the second and third shifts to
1469 determine conditions and practices relating to the health and safety of the miners. For an
1470 inactive mine, the mine inspector shall inspect all areas of the mine where persons may work
1471 or travel during the period the mine is an inactive mine.

1472 B. The inspector shall make a personal examination of the interior of the mine, and of
1473 the outside of the mine where any danger may exist to the miners.

1474 **Drafting note: Technical changes.**

1475 ~~§ 45.1-161.89. Certificates of inspection~~ 45.2-xxx. Inspection reports.

1476 A. Upon completing a mine inspection, a mine inspector shall complete a ~~certificate~~
1477 report regarding such ~~inspections~~ inspection. The ~~certificate of inspection report~~ shall show the
1478 date of inspection, the condition in which the mine is found, a statement regarding any
1479 violations of ~~this~~ the Act discovered during the inspection, the progress made in the
1480 improvement of the mine as such progress relates to health and safety, the number of accidents
1481 and injuries occurring in and about the mine since the previous inspection, and all other facts
1482 and information of public interest concerning the condition of the mine as may be useful and
1483 proper.

1484 B. The mine inspector shall (i) deliver one copy of the ~~certificate of inspection report~~ to
1485 the operator, agent, or mine foreman, and one copy to the employees' safety committee, where
1486 applicable, and shall (ii) post one copy at a prominent place on the premises of the mine where
1487 it can be read conveniently by the miners.

1488 C. With respect to coal mines, the Department shall provide access to ~~certificates of~~
1489 inspection reports to the federal Mine Safety and Health Administration.

1490 **Drafting note: "Certificate of inspection" is replaced by the term currently in use,**
1491 **"inspection report." Technical changes are made.**

1492 Article ~~9~~ 8.

1493 Enforcement and Penalties; Reports of Violations.

1494 **Drafting note: Existing Article 9, relating to enforcement and penalties and reports**
1495 **of violations, is retained as proposed Article 8.**

1496 § ~~45.1-161.90~~ 45.2-xxx. Notices of violations.

1497 A. If the Director, the Chief, or a mine inspector has reasonable cause to believe that a
1498 violation of the Act has occurred, he shall with reasonable promptness issue a notice of violation
1499 to the person who is responsible for the violation. Each notice of violation shall be in writing
1500 ~~and shall;~~ describe with particularity the nature of the violation ~~or violations~~, including a
1501 reference to the provision of ~~this~~ the Act or the appropriate ~~regulations~~ regulation violated, ~~and~~
1502 ~~shall;~~ include an order of abatement; and fix a reasonable time for abatement of the violation.

1503 B. A copy of the notice of violation shall be delivered to the operator; or his agent; or
1504 the mine foreman.

1505 C. Upon a finding by the mine inspector of completion of the action required to abate
1506 the violation, the Director, the Chief, or the mine inspector shall issue a notice of correction, a
1507 copy of which shall be delivered as provided in subsection B.

1508 D. The notice of violation shall be deemed to be the final order of the Department and
1509 not subject to review by any court or agency unless, ~~within twenty~~ 20 days following its
1510 issuance, the person to whom the notice of violation has been issued appeals its issuance by
1511 notifying the Department in writing that he intends to contest its issuance. The Department shall
1512 conduct informal conference or consultation proceedings, presided over by the Chief, pursuant
1513 to § 2.2-4019, unless the person and the Department agree to waive such a conference or
1514 proceeding to go directly to a formal hearing. If such a conference or proceeding has been
1515 waived, or if it has failed to dispose of the case by consent, the Department shall conduct a
1516 formal hearing pursuant to § 2.2-4020. The formal hearing shall be presided over by a hearing
1517 officer pursuant to § 2.2-4024, who shall recommend findings and an initial decision, which
1518 shall be subject to review and approval by the Director. Any party aggrieved by and claiming
1519 unlawfulness of the decision shall be entitled to judicial review pursuant to Article 5 (§ 2.2-
1520 4025 et seq.) of the Administrative Process Act.

1521 E. If it ~~shall be~~ is finally determined that a notice of violation was not issued in
1522 accordance with the provisions of this section, the notice of violation shall be vacated, and the
1523 improperly issued notice of violation shall not be used to the detriment of the person or the
1524 operator to whom it was issued.

1525 **Drafting note: Language is updated for modern usage. Technical changes are**
1526 **made, including changes pursuant to § 1-227, which states that throughout the Code any**
1527 **word used in the singular includes the plural and vice versa.**

1528 ~~§ 45.1-161.91~~ 45.2-xxx. Closure orders.

1529 A. The Director, the Chief, or a mine inspector shall issue a closure order requiring any
1530 mine or section thereof cleared of all persons, or equipment removed from use, and refusing
1531 further entry into the mine ~~of~~ by all persons except those necessary to correct or eliminate a
1532 hazardous condition, when (i) a violation of ~~this~~ the Act has occurred, ~~which~~ that creates an
1533 imminent danger to the life or health of persons in the mine; (ii) a mine fire, a mine explosion,
1534 or other serious accident has occurred at the mine, as may be necessary to preserve the scene of
1535 such accident during the investigation of the accident; (iii) a mine is operating without a license,
1536 ~~as provided by~~ in violation of ~~§ 45.1-161.57~~ 45.2-xxx; or (iv) an operator to whom a notice of
1537 violation was issued has failed to abate the violation cited therein within the time period
1538 provided in such notice for its abatement; however, a closure order shall not be issued for failure
1539 to abate a violation during the pendency of an administrative appeal of the issuance of the notice
1540 of violation as provided in subsection D of ~~§ 45.1-161.90~~ 45.1-xxx. ~~In addition, a~~

1541 B. A technical specialist may issue a closure order upon discovering a violation creating
1542 an imminent danger.

1543 ~~B.~~ C. One copy of ~~the~~ a closure order shall be delivered to the operator of the mine or
1544 his agent or the mine foreman.

1545 ~~C.~~ D. Upon a finding by the mine inspector of abatement of the violation creating the
1546 hazardous condition pursuant to which a closure order has been issued as provided in clause (i)
1547 of subsection A, or cessation of the need to preserve an accident scene as provided in clause (ii)
1548 of subsection A, or the issuance of a license for the mine if the closure order was issued as

1549 provided in clause (iii) of subsection A, or abatement of the violation for which the notice of
1550 violation was issued as provided in clause (iv) of subsection A, the Director, the Chief, or a
1551 mine inspector shall issue a notice of correction, ~~copies~~ a copy of which shall be delivered as
1552 provided in subsection ~~B~~ C.

1553 ~~D~~ E. The issuance of a closure order shall constitute a final order of the Department,
1554 and the owner or operator of the mine shall not be entitled to administrative review of such
1555 decision. The owner or operator of any mine or part thereof for which a closure order has been
1556 issued may, within ~~ten~~ 10 days following the issuance of the order, bring a civil action in the
1557 circuit court of the ~~city or county~~ county or city in which the mine, or the greater portion thereof,
1558 is located for review of the decision. The commencement of such a proceeding shall not, unless
1559 specifically ordered by the court, operate as a stay of the closure order. The court shall promptly
1560 hear and determine the matters raised by the owner or operator. In any such action, the court
1561 shall receive the records of the Department with respect to the issuance of the order, and ~~shall~~
1562 ~~receive~~ any additional evidence at the request of any party. In any proceeding under this section,
1563 the Attorney General or the attorney for the Commonwealth for the jurisdiction where the mine
1564 is located, upon the request of the Director, shall represent the Department.

1565 F. The court shall vacate the closure order if the preponderance of the evidence
1566 establishes that the order was not issued in accordance with the provisions of this section.

1567 ~~E~~ G. If it ~~shall be~~ is finally determined that a closure order was ~~not~~ issued not in
1568 accordance with the provisions of this section, the closure order shall be vacated, and the
1569 improperly issued closure order shall not be used to the detriment of the owner or operator of
1570 the mine for which it was issued.

1571 **Drafting note: Language is updated and subsection designations are added for**
1572 **clarity. Technical changes are made.**

1573 ~~§ 45.1-161.92~~ 45.2-xxx. Tolling of time for abating violations.

1574 The period of time specified in a notice of violation for the abatement of the violation
1575 shall not begin to run until (i) the final decision of the Department is issued, if an administrative
1576 appeal of its issuance is pursued, or ~~until~~ (ii) the final order of the circuit court is rendered, if

1577 an appeal of its issuance is taken to circuit court, ~~provided that the~~ and if such appeal pursuant
1578 to clause (i) or (ii) was undertaken in good faith and not solely for delay or avoidance of
1579 penalties.

1580 **Drafting note: Language is updated for clarity. Clause designations are added for**
1581 **clarity. Technical changes are made.**

1582 § ~~45.1-161.93~~ 45.2-xxx. Injunctive relief.

1583 A. Any person violating or failing, neglecting, or refusing to obey any closure order
1584 may be compelled in a proceeding instituted by the Director in any appropriate circuit court to
1585 obey ~~same such order~~ and to comply therewith with such order by injunction or other
1586 appropriate relief.

1587 B. Any person failing to abate any violation of ~~this the~~ the Act ~~which that~~ that has been cited in
1588 a notice of violation within the time period provided in such notice for its abatement may be
1589 compelled in a proceeding instituted by the Director in any appropriate circuit court to abate
1590 such violation as provided in such notice, and to cease the operation of the mine at which such
1591 violation exists until the violation has been abated, by injunction or other appropriate remedy.

1592 C. The Director may file a bill of complaint with any appropriate circuit court asking
1593 the court to temporarily or permanently enjoin a person from operating a mine ~~or mines~~ in the
1594 Commonwealth, to be granted upon finding by a preponderance of the evidence that (i) a history
1595 of noncompliance at the mine ~~or mines~~ operated by the person demonstrates that he is not able
1596 or willing to operate a mine in compliance with the provisions of ~~this the~~ the Act or (ii) a history
1597 of the issuance of closure orders for the mine ~~or mines~~ operated by the person demonstrates that
1598 he is not able or willing to operate a mine in compliance with the provisions of ~~this the~~ the Act.

1599 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
1600 **throughout the Code any word used in the singular includes the plural and vice versa.**
1601 **Language is updated for modern usage. Technical changes are made.**

1602 § ~~45.1-161.94~~ 45.2-xxx. Violations; penalties.

1603 Any person ~~convicted of who~~ willfully ~~violating~~ violates any ~~provisions~~ provision of
1604 ~~this the~~ Act or any regulation ~~promulgated~~ adopted pursuant to ~~this the~~ Act, unless otherwise
1605 specified in ~~this the~~ Act, ~~shall be~~ is guilty of a Class 1 misdemeanor.

1606 **Drafting note: Technical changes.**

1607 § ~~45.1-161.95~~ 45.2-xxx. Prosecution of violations.

1608 A. ~~It shall be~~ is the duty of every attorney for the Commonwealth to whom the Director
1609 or his authorized representative has reported any violation of ~~this the~~ Act or on his own initiative
1610 to cause proceedings to be prosecuted in such ~~eases~~ case.

1611 B. If the attorney for the Commonwealth declines to cause proceedings to be prosecuted
1612 in such ~~eases~~ case, the Director or the Chief may request the Attorney General to institute
1613 proceedings for any violation of the Act on behalf of the Commonwealth; however, such action
1614 shall not preclude the Director or the Chief from pursuing any other applicable statutory
1615 ~~procedures~~ procedure. Upon receiving such a request from the Director or the Chief, the
1616 Attorney General shall have the authority to institute actions and proceedings for violations
1617 described in the request.

1618 **Drafting note: Language is updated for clarity. Technical changes are made**
1619 **pursuant to § 1-227, which states that throughout the Code any word used in the singular**
1620 **includes the plural and vice versa.**

1621 § ~~45.1-161.96~~ 45.2-xxx. Fees and costs.

1622 No fees or costs shall be charged to the Commonwealth by a court or any officer for or
1623 in connection with the filing of any pleading or other papers in any action authorized by this
1624 article.

1625 **Drafting note: Language is updated for clarity.**

1626 § ~~45.1-161.97~~ 45.2-xxx. Reports of violations.

1627 A. ~~Any person aware of a violation of this Act may report the violation to a mine~~
1628 ~~inspector or to any other employee of the Department, in person, in writing, or by telephone~~
1629 ~~call, at the mine, at an office of the Department, or at the mine inspector's residence.~~

1630 ~~B.~~ The operator of ~~every~~ each mine, or his agent, shall deliver a copy of ~~this~~ the Act to
1631 ~~every~~ each miner upon the commencement of his employment at the mine, unless the miner is
1632 already in possession of a copy.

1633 B. Any person aware of a violation of the Act may report the violation to a mine
1634 inspector or to any other employee of the Department, in person, in writing, or by telephone
1635 call, at the mine, at an office of the Department, or at the mine inspector's residence.

1636 C. The operator of ~~every~~ each mine, or his agent, shall display on a sign placed at the
1637 mine office, at the bath house, and on a bulletin board at the mine site, a notice containing the
1638 office addresses and office and home telephone numbers of mine inspectors and other
1639 Department personnel, ~~and office addresses, which may be used to report~~ for the purpose of
1640 reporting any violation of ~~this~~ the Act.

1641 D. The Department shall keep a record, on a form prepared for such purpose, of every
1642 alleged violation of ~~this~~ the Act ~~which~~ that is reported and the results of any investigation. The
1643 Department shall give a copy of the complaint form, with the identity of the person making the
1644 report, and that of any individual ~~individuals~~ individual identified in the alleged violation being omitted
1645 or deleted, to the operator of the mine or his agent. The Department shall not disclose the
1646 identity of any person who reports an alleged violation to the owner or operator of the mine or
1647 his agent, or to any other person or entity. Information regarding the identity of the person
1648 reporting the violation shall be excluded from access under the provisions of the Virginia
1649 Freedom of Information Act (§ 2.2-3700 et seq.).

1650 **Drafting note: Language is updated and section designations are reordered for**
1651 **clarity. Technical changes are made.**

1652 Article ~~10~~ 9.

1653 Virginia Coal Mine Safety Board.

1654 **Drafting note: Existing Article 10, relating to the Virginia Coal Mine Safety Board,**
1655 **is retained as proposed Article 9.**

1656 ~~§ 45.1-161.98. 45.2-xxx. The Virginia Coal Mine Safety Board continued; membership;~~
1657 ~~appointments; expenses; purpose.~~

1658 ~~A. The Virginia Mine Safety Board is continued as the~~ Virginia Coal Mine Safety Board
1659 (the Board) is established as an advisory board in the executive branch of state government.
1660 The purpose of the Board is to advise the Chief on matters relating to the health and safety of
1661 persons working in the Virginia coal industry.

1662 **Drafting note: A statement of the purpose of the Virginia Coal Mine Safety Board**
1663 **is added to reflect current board language preferred in the Code and obsolete language is**
1664 **removed. The remainder of existing § 45.1-161.98 is retained as proposed § 45.2-xxx**
1665 **[following section].**

1666 § 45.2-xxx. Membership; terms; compensation; quorum; meetings.

1667 ~~A. The Virginia Coal Mine Safety Board shall be composed~~ have a total membership of
1668 10 members that shall consist of nine nonlegislative citizen members appointed by the
1669 Governor, subject to the confirmation of by the General Assembly, and one ex officio member.
1670 Nonlegislative citizen members shall be appointed as follows: three ~~shall~~ to be appointed from
1671 a list of individuals nominated by the Virginia Coal and Energy Alliance; ~~three shall~~ to be
1672 appointed from a list of individuals nominated by the United Mine Workers of America; ~~and~~
1673 ~~three shall~~ to be appointed from the Commonwealth at large. ~~All Nonlegislative citizen~~
1674 ~~members of the Board shall serve at the pleasure of the Governor and shall be residents of the~~
1675 Commonwealth.

1676 B. The members of the Board shall elect its chairman. Members shall serve for terms of
1677 four years and their successors shall be appointed for terms of the same length, but vacancies
1678 occurring other than by expiration of a term shall be filled for the unexpired term. Any member
1679 may be reappointed for successive terms. Members shall receive no compensation for their
1680 services but ~~shall receive reimbursement~~ be reimbursed for actual all reasonable and necessary
1681 expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.
1682 Funding for the costs of compensation and expenses of the members shall be provided by the
1683 Department.

1684 ~~§ 45.1-161.99. Meetings of the Virginia Coal Mine Safety Board; notices; quorum.~~

1685 C. ~~The Virginia Coal Mine Safety~~ Board shall hold meetings at such times and places
1686 as shall be designated by the chairman. The chairman may call a meeting of the Board at any
1687 time and shall call a meeting of the Board within ~~twenty~~ 20 days of receipt by the chairman of
1688 a written request for a meeting by another member of the Board. Notification of each meeting
1689 of the Board shall be given in writing to each member by the chairman at least five days in
1690 advance of the meeting. The chairman and any four or more members of the Board shall
1691 constitute a quorum for the transaction of any business of the Board.

1692 **Drafting note: All but the first sentence of existing § 45.1-161.98 [previous section]**
1693 **is retained and is combined with existing § 45.1-161.99 as proposed § 45.2-xxx. The board**
1694 **language for the Virginia Coal Mine Safety Board is updated to reflect current language**
1695 **preferred in the Code, obsolete language is deleted, and technical changes are made.**

1696 ~~§ 45.1-161.100~~ 45.2-xxx. Powers and duties of the Virginia Coal Mine Safety Board.

1697 The Virginia Coal Mine Safety Board ~~shall have~~ has the power to advise and make
1698 recommendations to the Chief on matters relating to the health and safety of persons working
1699 in the Virginia coal industry. The Board shall serve as the regulatory work committee for the
1700 Department on all coal mine health and safety regulations not under the jurisdiction of the Board
1701 of Coal Mining Examiners.

1702 **Drafting note: Technical change.**

1703 ~~Article 11~~ 10.

1704 Miner Training.

1705 **Drafting note: Existing Article 11, relating to miner training, is retained as**
1706 **proposed Article 10.**

1707 ~~§ 45.1-161.101~~ 45.2-xxx. First aid training of coal miners.

1708 A. The Chief shall establish specifications for first aid and refresher training programs
1709 for miners at coal mines. Such specifications shall be no less than, but may exceed, the
1710 minimum requirements of such training programs ~~which~~ that underground and surface coal
1711 mine operators are required to provide ~~for~~ to their employees by the federal mine safety law.
1712 The Chief is authorized to utilize the Department's educational and training facilities in the

1713 conduct of such training programs and may require the cooperation of operators in making such
1714 programs available to their employees.

1715 B. Each operator of a coal mine, upon request, shall make available to every miner
1716 employed in such mine the course of first aid training, including refresher training, as is required
1717 by pursuant to subsection A.

1718 **Drafting note: Technical changes.**

1719 ~~§ 45.1-161.102~~ 45.2-xxx. Training programs.

1720 A. The Department may administer training programs for the purpose of (i) assisting
1721 with the provision of selected requirements of the federal mine safety law and (ii) preparing
1722 miners for examinations administered by the Board of Coal Mining Examiners. The Director
1723 shall establish the curriculum and teaching materials for the training programs, which shall be
1724 consistent with the requirements of the federal mine safety law where feasible.

1725 B. The Department is authorized to charge persons attending the training programs
1726 reasonable fees to cover the costs of administering such programs. The Director may exempt
1727 certain persons from any required fees for refresher training programs, based on the person's
1728 employment status or such other criteria as the Director deems appropriate. The Director shall
1729 not be required to allocate more of the Department's resources to training programs than are
1730 appropriated or otherwise made available for such purpose, or are collected from fees charged
1731 to attendees.

1732 C. No miner, operator, or other person shall be required to participate in any training
1733 program established under this article. Nothing contained herein shall prevent an operator or
1734 any other person from administering a state-approved training program.

1735 **Drafting note: Technical change.**

1736 ~~§ 45.1-161.103~~ 45.2-xxx. Additional coal mining training programs.

1737 The Chief is authorized to implement a voluntary on-site safety awareness training
1738 program for coal ~~mines~~ miners. Such training may be conducted by a mine inspector in
1739 conjunction with his inspection of a coal mine or by other Department personnel. Safety

1740 awareness training for coal miners may include such methods as job safety analysis and topical
1741 talks on safety issues intended to reduce accidents.

1742 **Drafting note: Language is updated for modern usage. Technical changes are**
1743 **made.**

1744 ~~§ 45.1-161.104. Repealed.~~

1745 **Drafting note: Repealed by Acts 1997, c. 390.**

1746 #