

Agenda Item 1 - Welcome and Introduction of New Members

Delegate Don L. Scott

Delegate Marcus B. Simon

Agenda Item 2 - Review and Approve Minutes

VIRGINIA CODE COMMISSION

Monday, December 16, 2019 - 10:00 a.m.

*Pocahontas Building, 6th Floor
Speaker's Conference Room
900 East Main Street
Richmond, Virginia 23219*

DRAFT

Meeting Minutes

Members Present: John S. Edwards; James A. Leftwich, Jr.; Nicole S. Cheuk; Rita Davis; Leslie L. Lilley; Ryan T. McDougle; Thomas M. Moncure, Jr.; Christopher R. Nolen; Malfourd W. Trumbo; Samuel T. Towell

Members Absent: Charles S. Sharp; Mark Vucci

Staff Present: David Barry, Brooks Braun, Emma Buck, Scott Meacham, Amigo Wade, Karen Perrine, Anne Bloomsburg, Stephanie Kerns, Division of Legislative Services (DLS)

Others Present: Brian Kennedy, LexisNexis; Michael Skiffington, Department of Mines, Mineral and Energy; Melissa Velazquez, Department of Motor Vehicles

Call to order: Senator Edwards, chair, called the meeting to order at 10:03 a.m. Karen Perrine stated that Mark Vucci resigned as Director of the Division of Legislative Services (DLS) to join the House of Delegates Clerk's Office effective at the start of the 2020 Session of the General Assembly. Section 30-145 of the Code of Virginia regarding membership on the Commission does not provide for a designee of the director to represent the director. Until a new director is appointed, Amigo Wade, Deputy Director of DLS, will attend the Commission meetings to assist the Commission in its work, but Mr. Wade will not be a voting member of the Commission.

Ms. Perrine requested that the agenda be amended to include consideration of setting out § 46.2-341.2 of the Code of Virginia, which was presented at the September 16, 2019, meeting and continued for receipt of additional information. Hearing no objection, Senator Edwards approved amending the agenda.

Approval of minutes: The minutes of the October 21, 2019, meeting of the Commission, as printed and distributed to the members, were approved without objection.

Renewal of contract to publish Virginia Register of Regulations: Karen Perrine stated that the current contract with LexisNexis for publication of the Virginia Register of Regulations will expire June 1, 2020. The contract provides for renewal every two years upon mutual agreement. Staff recommends renewal on the same terms as the current contract. Brian Kennedy advised that LexisNexis is pleased to renew the contract and continue its relationship with the Commission and Division of Legislative Services. On motion of Senator Edwards, duly seconded, the Commission approved renewal of the contract until June 1, 2022.

Chris Nolen abstained from participation in this item and the vote, as Mr. Nolen's law firm represents the parent company of LexisNexis, although Mr. Nolen does not do any work for the parent company.

Follow-up: Review of codified sections in Title 46.2 (Motor Vehicles) currently shown as "Not Set Out": At the September 16, 2019, meeting, the Commission considered § 46.2-341.2 of the Code of Virginia as part of its ongoing review of Code of Virginia sections that were codified but not set

out in the Code. Section 46.2-341.2 states the intent of the Commercial Driver's License Act; however, that intent is accomplished through the substantive provisions of the other sections in the act. In accordance with the Commission's policy not to have purpose or intent sections in the Code of Virginia, the recommendation is to repeal this section, which does not create substantive law. The Commission agreed that the second sentence could be repealed; however, a question was raised as to whether repealing the first sentence of the section would impact federal funding. The Commission deferred a decision on this item pending receipt of additional information.

Emma Buck stated that, immediately after the September meeting, Melissa Velazquez of the Department of Motor Vehicles (DMV) requested guidance from the Federal Motor Carrier Safety Administration (FMCSA) on that agency's interpretation of the repeal of § 46.2-341.2 and repeatedly followed up on her first contact. Just before today's meeting, DMV received confirmation from FMCSA that repealing this section would not be interpreted as detrimental to the federal act being effective in the Commonwealth. Staff recommends and DMV supports the repeal of § 46.2-341.2. Upon motion of Judge Lilley, seconded by Mr. Moncure, the Commission approved recommendation of a bill for the 2020 Session of the General Assembly to repeal § 46.2-341.2.

Follow-up on review of codified sections in Title 36 (Housing) currently shown as "Not Set Out" in the Code of Virginia: At the August 18, 2019, meeting, the Commission considered §§ 36-19.1, 36-19.4, and 36-27.1 of the Code of Virginia as part of its ongoing review of Code of Virginia sections that were codified but not set out in the Code. Staff recommended setting out all three sections and replacing the population brackets with the name of the affected city or county. A question was raised as to other localities that may have grown into the bracket, and the Commission deferred a decision pending receipt of additional information.

Amigo Wade stated that in researching this matter to provide the requested information, he discovered that a 1975 Act of Assembly already replaced the population bracket with the name of the locality. Therefore, a bill is unnecessary, and the section may be set out under the Commission's authority. Upon motion of Judge Lilley, seconded by Mr. Trumbo, the Commission approved setting out §§ 36-19.1, 36-19.4, and 36-27.1. Mr. Moncure voted no.

Follow-up on review of codified sections in Title 57 (Religious and Charitable Matters; Cemeteries) currently shown as "Not Set Out" in the Code of Virginia: At the August 18, 2019, meeting, the Commission considered § 57.2-39.2 of the Code of Virginia as part of its ongoing review of Code of Virginia sections that were codified but not set out in the Code. The section addresses how an owner of certain cemeteries may acquire abandoned cemetery lots. Staff recommended setting out this section and replacing the population brackets with the name of the affected city or county. A question was raised as to other localities that may have grown into the bracket, and the Commission deferred a decision pending receipt of additional information.

Brooks Braun reported that originally only Scott and Wythe Counties were in the population bracket in § 57.2-39.2. Subsequently, Botetourt, Dinwiddie, and Isle of Wight Counties grew into and out of the bracket. Lee County grew into but not out of the bracket. A request was sent out to all counties through the Virginia Association of Counties for comment on setting out the sections and listing specific counties instead of using a population bracket. Of the affected counties, Isle of Wight responded and requested being included in the list of counties in the statute. Representatives of Isle of Wight County indicated that the county has not exercised the authority included in § 57.2-39.2 but expects to do so in the future.

The Commission discussed the use and effect of population brackets in the Code as well the options for recommendations to the General Assembly. Mr. Trumbo moved that the Code Commission recommend a bill for the 2020 Session of the General Assembly to replace the population bracket with the names of Scott and Wythe Counties only. Upon a second by Judge Lilley, the motion passed with seven ayes and three nays.

Recodification of Title 45.1, Mines and Mining: The Division of Legislative Services (DLS) recodification team, Scott Meacham and David Barry, presented this item. Sections are referenced by existing Title 45.1 numbers as Title 45.2 section numbers have not been finalized.

Mr. Meacham reviewed questions raised at the October meeting regarding proposed Chapter 7 of Title 45.2. He stated that each question was discussed and presented the Commission with the result agreed to by the work group, as follows:

§ 45.1-161.109: Retain the grandfather clause, which states: "This section shall not apply to roof control systems installed prior to January 27, 1988, so long as the support system continues to effectively control the roof, face and ribs."

§ 45.1-161.162: Retain the date "July 1, 1999."

§ 45.1-161.159 A: Retain the word "person"; do not replace with "miner"

§ 45.1-161.161: Use the word "component" instead of "piece."

Mr. Meacham then reviewed proposed Chapters 8, 14, and 15 of Title 45.2.

Chapter 8 of Title 45.2 - Requirements Applicable to Underground Coal Mines (existing §§ 45.1-161.105 through 45.1-161.252).

Mr. Meacham explained that proposed Chapter 8 is composed of existing Articles 4, 10, 11, 12, 13, and 14 of Chapter 14.3 of Title 45.1. Most of the changes in Chapter 8 are grammatical corrections or modernization or clarification of existing language. At the Commission's request, items for clarification or follow-up are:

§§ 45.1-161.125 and 45.1-161.186 F (lines 3 and 54, respectively): Removal of the dates in these sections will be reconsidered after additional research.

§ 45.1-161.188 C: The name of the referenced national standard will be clarified.

§ 45.1-161.225: The name of the referenced national standard will be clarified.

Chapter 14 of Title 45.2 - Requirements Applicable to Underground Mineral Mines (existing §§ 45.1-161.293 through 45.1-161.303).

Mr. Meacham explained that proposed Chapter 14 is composed of the provisions of existing Chapter 14.5 of Title 45.1. Most of the changes in Chapter 14 are grammatical corrections or modernization or clarification of existing language.

Upon a question from Mr. Towell regarding the stricken language in § 45.1-161.298 B regarding regulations, Mr. Meacham explained that the stricken text provided standards in the statute that were effective only until final regulations were adopted. The text is unnecessary as the Department of Mines, Minerals and Energy has adopted permanent regulations. Also, the remaining text of the section requires the department to continue updating regulations.

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

Mr. Meacham explained that proposed Chapter 15 is composed of the provisions of existing Chapter 14.6 of Title 45.1. Most of the changes in Chapter 15 are grammatical corrections or modernization or clarification of existing language.

Regarding § 45.1-161.307 B (line 85), Senator McDougle asked whether changing "a copy of parts" to "copies" before "of the maps and plans required" had an unintended adverse consequence. Mr. Meacham stated that the work group will address the question when it meets again in the spring of 2020.

Judge Lilley commended Mr. Meacham and Mr. Barry for their work on the title recodification.

Other business:

- Review of the Code Commission legislative package for the 2020 Session of the General Assembly and selection of bill patrons. Karen Perrine presented the list of bills approved as Code Commission sponsored bills and requested a patron for each bill. Delegate Leftwich will carry the bills regarding the Title 55.1 technical corrections and § 36-85.4 of the Code of Virginia. Senator McDougle will carry the bills regarding §§ 46.2-1106, 46.2-1107, 46.2-1580, 46.2-1582, and 46.2-341.2 of the Code of Virginia. Senator Edwards will carry the bills regarding restructuring of Code of Virginia sections regarding polling place activities, provisional voting, and recounts and amending § 57-39.2 of the Code of Virginia.

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 11:23 a.m.

Next meeting: Next year's schedule will be established early in 2020.

Agenda Item 3 - Election of Vice Chair

No meeting materials

Agenda Item 4 - Virginia Administrative Code Contract Changes

Request for Amendments to the Virginia Administrative Code Publication Contract

Due to low print subscription numbers for the Virginia Administrative Code, the Thomson Reuters West Codes Editorial team reviewed the processes under the current agreement in an effort to improve the financial supportability of the publication. Requested changes are:

1. Section VI, Database, Subsection A: The contract requires West to convert the state source data “programmatically” with 99.97% accuracy. Instead of a programmatic conversion, West would like to have the discretion to have the content keyed by an outside vendor.

- Vendor-keyed data has the same accuracy rate, and if changes to the data are needed, the keyed data can be changed more easily than programmatically-converted data.
- Over-all quality would improve, as West would be able to make corrections/changes more quickly and simplify its processing.
- Processing speed would improve as West could take advantage of its standardized workflows, as most of West’s administrative codes use vendor-keyed output.

Note: Subsection A starts at the bottom of page 3 of the contract.

1. Section VII, Editorial Enhancements, Subsection A, Number 4, requires in part, “...amendment notes that would be written by editors and a brief summary of the changes made by the amendment...” West would like to remove the amendment notes requirement from the agreement.

- Creation of the amendment notes to show the "Effect of Amendment" is a very manual process and uses a great deal of editorial resources.
- Notes only appear in the cumulative supplement and not in the Titles volumes, so they are a temporary feature.
- Most administrative codes that West publishes do not include amendment notes.
- Ideally, West would like to remove this requirement. Alternatively, West proposes to at least limit this requirement to a defined number of titles, for example, the five most frequently used Virginia Administrative Code titles on Westlaw. This approach also aligns with West's Virginia Statutes set.
- This change will greatly improve the financial feasibility of West continuing as the publisher.

Note: Number 4 is on page 4 of the contract.

1. Section VII, Editorial Enhancements, Subsection A, Number 7, requires, “research and practice references to major national and state legal publications, including American Jurisprudence, Annotated Law Reports, and law reviews.”

- Creation of these references is also a very manual process and uses a great deal of editorial resources.
- The vast majority of these references do not discuss Virginia Administrative Code content, but instead are primarily focused on statutory content.
- The preference is to retain the cross references, AG opinions and case annotations instead of the American Jurisprudence, ALR references, and law reviews.
- As noted above, eliminating or reducing this requirement would also improve efficiencies for the editorial team, and customers would still have the benefit of citing references when they access the Code on Westlaw.

Note: Number 7 is on page 4 of the contract.

VIRGINIA ADMINISTRATIVE CODE CONTRACT

WHEREAS, the Virginia Code Commission ("Commission") and Lawyer's Cooperative Publishing, a division of Thomson Legal Publishing, Inc., now West, a division of Thomson Reuters ("West" or "Publisher") entered into a series of contracts beginning January 13, 1994, for the preparation of the Virginia Administrative Code ("Code"); and

WHEREAS, the contract executed in August 2008 will expire on April 30, 2013; and

WHEREAS, the Commission and West desire to enter into a new contract for the publication of the Virginia Administrative Code beginning May 1, 2013, for a period of seven years until April 30, 2020, and to provide for future options to renew;

NOW, THEREFORE, for good and valuable consideration; the receipt of which is hereby acknowledged, the parties agree as follows:

I. PARTIES

The Commonwealth of Virginia, acting by and through the Commission, enters into this Contract with West Publishing Corporation for the preparation and distribution of the Virginia Administrative Code, containing regulations, cumulative supplementary pamphlets and general indices and the respective updates for all regulations until April 30, 2020, under the terms and conditions expressed herein. West is the official Publisher of the Virginia Administrative Code for the duration of this Contract. The Commonwealth shall have the option to extend this Contract at four-year intervals unless West notifies the Commission, in writing, one year prior to the expiration of the first renewal term or any subsequent renewal term of its intent not to publish the Virginia Administrative Code.

The parties agree that this signed document represents the complete and final expression of the parties' agreement regarding the matters set forth herein and may be modified only by written agreement of the parties.

All words in this contract are used in an ordinary general sense or, where applicable, to reflect statutory language and meaning; the parties are not relying on any prior or contemporaneous oral or written communications or on any side discussion of terms to clarify the meaning of terms or attribute any special meaning to any term, but instead have included all necessary clarifications in the Contract itself.

II. FUNDING

The parties agree that the Commonwealth shall not bear any expenses or costs not expressly allocated or assigned to the Commonwealth pursuant to this Contract. West understands and agrees that the publication of the Virginia Administrative Code shall not result in an expenditure of general fund revenue except funds used to purchase sets, volumes or slices by individual state agencies.

III. PRICING AGREEMENT

A. The following maximum price schedule shall apply to the preparation and publication of the Code. The prices stated in this Contract shall remain the same for the term of the Contract except for adjustments made under subsection F of this Section.

Without limiting the foregoing, it is expressly understood that all risks associated with the size or growth in size of the materials designated by the Commission for inclusion in the Virginia Administrative Code publication are assumed in their entirety by the Publisher. One of the purposes of

this provision is to assure that the Commission, throughout the term of this Contract, will be entitled to determine, in its sole discretion and without any impact on the firm fixed price hereunder, what material is appropriate for inclusion or exclusion in the Virginia Administrative Code publication. Both parties recognize that the decisions made by the Commission will affect the prices bid or the willingness of vendors to bid in future solicitations, but the Commission is otherwise free to make the above decisions without impact on price.

B. Soft-covered, perfect bound print volumes:

<u>Year 1 Pricing</u>	<u>STATE</u>	<u>PUBLIC</u>
Full Set	\$375	\$450
October Cumulative Supplementary Pamphlet (Set of 4)	\$215	\$252
Individual Supplementary Pamphlets	\$53.75	\$63
October Index A-I	0*	0*
October Index J-Z	0*	0*
Individual Recomp/Replacement Volumes	\$36	\$42
*No cost with subscription to full set during first 3 years of contract term. \$28 for individual subscriptions.		

C. CD-ROM:

	<u>STATE</u>	<u>PUBLIC</u>
Base subscription	\$245	\$405
Quarterly updating	\$80	\$135
Semiannual updating	\$120	\$205

D. On-line subscription: The Publisher shall make the Virginia Administrative Code available, on a fair and reasonable basis, to any on-line data information service. The prices charged to the customers for the on-line subscription are at the sole discretion of those entities supplying such services, their successors and/or assigns.

E. The prices established in subsections B and C include the following:

1. Twenty-five free CD-ROM discs and their periodic supplementation to the Commission for distribution at its direction; and
2. Five free printed sets and their periodic supplementation to the Commission for distribution at its direction.
3. The CD-ROM discs mentioned in subsection E1 of this section shall be delivered in the manner requested by the Virginia Code Commission.

F. Beginning May 1, 2014, and in May of each year following for the remainder of the term of the Contract, the annual price of printed sets and volumes may be increased by West by an amount no greater than the change in the Producer Price Index for Book Publishing - Industry Code 2731 ("PPI") for the previous year or 5.0%, whichever is less. West will provide notice of a price increase and the effective date on or before May 1 of each year.

For an increase greater than 5% of the previous year's PPI, West must obtain approval of the Commission.

G. Upon any State or public purchaser's acceptance of a CD-ROM copy of the applicable price set forth in subsection C of this section, such State or public user shall own the CD-ROM copy it has accepted and shall have all of the rights provided under 17 U.S.C. § 117 in connection with that copy.

IV. FORMAT AND BINDING

A. The Publisher shall prepare and distribute a Virginia Administrative Code that shall be published in softcovered, perfect bound volumes. The regulations in the Virginia Administrative Code shall be compiled using an agency organization, grouping agencies together by germaneness of subject matter as approved by the Commission.

B. Each volume shall contain a user's guide, a table of contents of the entire set and a specific table of contents for each subject matter in the volume. The user's guide shall contain explanations of features of the Code and briefly explain how to use the features more effectively: authorities, contents list, cross-references, editor's notes, emergency regulation notes, annotations, indexes, history notes and repealed regulations. It shall also include a toll-free telephone number for index assistance and current status information. The table of contents of the entire set shall, at a minimum, include a listing of each subject matter volume, the agencies grouped under each subject matter heading and the volume in which each such subject matter and agency can be found. The table of contents specific to the volume shall include, at a minimum, the subject matter headings, each agency grouped under each subject matter heading and under each agency a listing of the specific agency regulation sections, with catchlines, grouped in numerical order and according to chapter or article division.

C. The format and numbering system devised for the Code shall represent a comprehensive system for the codification of regulations as approved by the Commission. In managing repealed regulations, the full text of regulations that have been repealed shall be removed from the printed version, leaving a note, catchline and section number for the regulations.

V. SPECIFICATIONS

A. Printed Version.

1. The Virginia Administrative Code shall consist of a set of an appropriate number of volumes, as approved by the Commission, which shall be soft-covered, perfect bound. The number of pages in each volume shall be as approved by the Commission. Supplementation shall be cumulative, once per year. The cumulative supplementary pamphlets will be in a soft-covered, perfect bound format. New or replacement volumes shall follow the specifications for original volumes going forward.

2. The printing specifications for the Virginia Administrative Code shall be those enumerated in Appendix A to this Contract.

B. CD-ROM Version.

1. The Publisher shall offer the Virginia Administrative Code on a single CD-ROM disc, using local search and retrieval software enabling users to word search the entire Code text. The product shall also offer a "cut and paste" feature, allowing users to incorporate search results into documents.

2. The contents, documentation and features of the CD-ROM product shall be those enumerated in Appendix B of this Contract.

VI. DATABASE

A. The Publisher agrees to maintain all regulations in a single, electronic database. The Publisher shall be given the regulatory information currently available from the Commission in an

electronic format and shall convert it programmatically with 99.97 percent accuracy. The Publisher shall also receive material not available in electronic form, which will be scanned and coded, or keyboarded and coded, with a double proofing operation of the converted material to achieve 98 percent accuracy.

B. The entire electronic database or portions of the database shall be provided to the Commonwealth of Virginia by electronic transmission when requested by the Commission.

C. The database shall be coded so that it will be possible to easily extract the information in any fashion, to any medium, for any end product. The system shall allow for the information to be easily "sliced" to produce new end products.

D. The Commission may develop its own database for the Code, subject to any restrictions in this agreement.

VII. EDITORIAL ENHANCEMENTS

A. The Publisher shall include in each agency regulation the following:

1. The catchline of the regulation, as provided by the agency or as approved by the Commission;

2. The statutory authority for individual regulations, stating the legislative act under which the agency was given the specific authority to promulgate the regulation, and also citing the specific Code of Virginia section under which the regulation was promulgated;

3. The text of the regulation;

4. The authority references or history notes, including the latest Virginia Register number, if any, from which the regulation was derived and the effective date of the original regulation; prior amendments to the regulation to the extent they can be determined; every subsequent change to the regulation, or addition of new regulations specifying the state register it was published in and the effective date of the change or addition; amendment notes that would be written by editors and a brief summary of the changes made by the amendment; and repeal notes, describing what a repealed regulation pertained to prior to its repeal;

5. The editorial notes, as required to explain anything that might make the Code easier for the customer to use, for example, correcting an incorrect cross-reference in the text of the regulation or minor changes made pursuant to § 30-150 of the Code of Virginia;

6. The cross-references to other regulations in the Virginia Administrative Code and to the Code sections in the Code of Virginia;

7. The research and practice references to major national and state legal publications, including American Jurisprudence, Annotated Law Reports, and law reviews;

8. References to Opinions of the Attorney General of Virginia issued after October 1, 1984; and

9. The annotations of state and federal court cases decided after October 1, 1984.

B. It is agreed that the work of preparing, editing and printing the Code and each of the annual cumulative supplementary pamphlets and replacement volumes shall be performed under the supervision and direction of the Commission.

VIII. SUPPLEMENTATION

A. The Publisher shall prepare and publish a cumulative annotated supplementary pamphlet to the Virginia Administrative Code set for the term of this Contract. The Publisher agrees to maintain its

ability to issue updates or supplementary pamphlets at any time intervals, and at varying time intervals for print products, CD-ROM products, and on-line services. The Publisher shall work with the Commission and the demands of the private sector market to determine the most appropriate intervals for delivering print supplementary pamphlets, and CD-ROM and on-line updates. Supplementary pamphlets or updates shall be annual, or more frequently if directed by the Commission.

B. The updating of the Publisher's Code database shall be an ongoing process. As the Publisher receives an electronic copy of the final regulations in the Register, it shall immediately update the database. New regulations shall be added, amendments executed and repealed regulations removed from print with some marker in the database indicating the repealed status. The historical notes, editorial notes, amendment notes and other annotation material mentioned in Section VII of this Contract shall also be added or modified during the update and as they become available.

C. The Publisher shall maintain a toll-free telephone number for customer inquiry concerning the current state of a particular regulation. The Publisher will provide the Virginia Register volume and issue number in which any change to the particular regulation was published to inquiring customers. The Publisher will email or fax the customer of a copy of the new version of the regulation at a reasonable per page fee.

D. Each cumulative supplementary pamphlet shall include all of the new regulations, amendments made to existing regulations and repealed regulations removed with appropriate editorial notes. Also, each cumulative supplementary pamphlet shall include updates of all of the other items mentioned in Section VII of this Contract. The full text of such regulations added or amended shall be set out in each cumulative supplementary pamphlet. The codification, arrangement and numbering of the regulations shall follow and conform to the codification, arrangement and numbering of the original Virginia Administrative Code. A reliable proofreading and verification system shall be mutually agreed upon by the Publisher and the Commission in order to assure 98 percent accuracy. The Commission's agreement with use of a particular system shall not be construed to relieve the Publisher of its obligation to attain 98 percent accuracy.

E. The cumulative supplementary pamphlets shall be packaged with filing instructions to ensure ease-of-use by the user.

F. The cumulative supplementary pamphlets shall be prepared annually by the Publisher and shall be delivered not later than October of each year.

IX. REPLACEMENT VOLUMES

A. The Publisher and the Commission agree that at least four replacement volumes shall be published each year as directed by the Commission.

B. The Publisher agrees to combine the regulations and annotations and editorial notes set out in each volume with the statutes and annotations and editorial notes in the supplement including all newly added regulations or newly modified regulations preceding the publication of the replacement volumes.

C. The replacement volumes shall be shipped within thirty days of the date of the shipment of the cumulative supplementary pamphlets.

D. Subject to the direction of the Commission, the Publisher shall:

1. Completely and accurately edit the materials to be set out in the volumes to be replaced;
2. Correct all errors and omissions found therein;
3. Give effect to all amendments and repeals relating thereto;

4. Make appropriate changes in headings, analyses and references; and

5. Examine and revise annotations in light of statutory changes and correct all errors found therein.

E. Unless approved by the Commission, the format and general characteristics of the replacement volumes shall be substantially similar to the original Code volumes. The binding will be soft-covered, perfect bound. Volumes and subject title table of contents as displayed in the original Code are to be included in future replacement volumes produced under this Contract. The format for individual pages and paper weight of replacement volumes shall be substantially similar to the current format.

X. INDICES

The Publisher shall prepare a General Index for publication in print as approved by the Commission. The General Index shall be updated and published annually and shall conform to the specifications in Section V of this Contract. The General Index shall be bound with flexible, perfect bound covers and shall be delivered at the same time as the cumulative supplement for the Code. Additional specifications for the General Index are:

1. Lines will be produced by an actual reading of the body of the Code and other material, not merely from headings and descriptions. The General Index shall render all regulations accessible both by subject area and by regulatory agency.

2. All regulations of the Code, and other appropriate material, will be separately indexed. Blanket references may be used only where a group of regulations includes the same general subject matter or where separate indexing of each regulation would serve no useful purpose.

3. All major headings used in the Code shall be represented, but the Index will not be a mere alphabetical arrangement of those headings. The Publisher's editors will break down the large divisions employed by the compilers and arrange index lines under such group headings as a user may reasonably expect to look for in an index prepared in an alphabetical and catchword system. The Index shall include key words embracing names of places, things and events covered thereby.

4. Headings, subheadings, lines and sublines under the headings are to be alphabetically arranged.

5. A subject shall be indexed under each descriptive word either by a direct reference or by a cross-reference, when it may be reasonably indexed under more than one descriptive word.

6. The lines under each heading shall begin with a descriptive word, so as to be readily located without necessitating a reading or scanning of all entries under the heading.

7. Popular names, short titles or topical expressions of regulations will be included in the Index when known or found by the Publisher, and as directed by the Commission.

8. Where a heading consists of an expression for which there is a common synonym, adequate cross-references shall be made.

9. Where a group of lines consisting of one flush line and two or more indented lines have been entered under a chosen heading and also may properly be entered under other headings, adequate cross-references shall be made, the object being to gather all related matter together in one place, rather than scattering the lines under various headings necessitating numerous cross-references to each of the various headings. Single flush lines with less than two indented lines shall be duplicated under all appropriate headings.

10. Adequate cross-references shall be made where matter under one heading might reasonably be expected to be found under another heading.

11. Cross-references will correctly refer to the place in the Index at which a user will find references to Code material. Double-jump references will be avoided.

12. Cross-references will be made where, in the judgment of the Index editors or the Commission, such references would be helpful to the user.

13. Repealed laws will be deleted from the Index and references to new laws and new subjects in amended laws shall be integrated in each updated General Index.

14. The paper used for the Index will be approved by the Commission.

15. A toll-free telephone number printed, on the user's guide to the Index or in documentation for electronic media, shall be made available to users of the Code to obtain assistance in locating regulations.

16. West will include West email address in filing instructions for customers to communicate suggestions to Publisher.

17. Customers will be able to purchase the General Index separately.

18. The Publisher shall provide to the Commission, on request, a listing of all index entries, sorted numerically by section number.

XI. TERMINATION

A. In addition to any other remedies provided by law or in this Contract, the Commonwealth has the right to terminate this Contract upon the occurrence or continuation of any of the following events, such termination to be effective immediately upon mailing written notice of termination to the Publisher or to be effective at such later time as the Commonwealth may choose:

1. Failure of the Publisher to make delivery of any portion of its work by the dates and times specified in this Contract;

2. Failure of the Publisher to deliver publications required under this Contract that are not in good and new condition or do not conform to specifications;

3. Failure of the Publisher to cure any other default in performance of the Contract within thirty calendar days after written notice thereof is mailed by the Commonwealth to the Publisher;

4. Whenever the Publisher misrepresents facts or conditions to the Commonwealth;

5. Whenever there has been pending for more than sixty calendar days proceedings against or by the Publisher under bankruptcy or insolvency laws, for corporate reorganization, receivership, dissolution or similar proceedings; or

6. Whenever the Publisher makes a general assignment for the benefit of creditors.

West shall give immediate notice to the Commission upon the occurrence of any of the events listed in subdivisions 1 through 6 above.

B. If the performance by either party under this Contract is delayed due to causes beyond its control, including, but not limited to fires, abnormal/adverse weather conditions or unavoidable casualties not caused by either party, the period of performance will be extended for a period of time equal to the delay; however, if any such delay continues for more than ninety calendar days, the party whose performance is not affected may terminate this Contract immediately upon giving written notice of termination to the other party.

C. Upon termination or expiration of this Contract, the Publisher shall, at the Commission's request and at no additional charge, provide the Commission with all documents, electronic files or other records generated in the performance of this Contract, including, without limitation, a list, in electronic form, of the names and addresses of all subscribers to the Code. Upon request, the Publisher shall also cooperate fully with the Commission in identifying the documents, electronic files or other records that the Commission might want to request. This subsection shall not be construed as requiring the Publisher to turn leftover inventory over to the Commission.

D. If at any point after May 1, 2015, the publication is assessed by the Publisher to be financially unsupportable, the Publisher may terminate this agreement by providing the Commission with 12 months written notice of its findings and its intent. The Publisher will work with the Commission to assist with the transitioning of the publication over to whatever provider or medium the Commission selects.

XII. GENERAL TERMS AND CONDITIONS

A. Applicable Laws and Courts: This Contract is governed solely and in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto will be brought in the courts of the Commonwealth. The contractor shall comply with applicable federal, state and local laws and regulations.

B. Anti-Discrimination: By signing this Contract, the Publisher certifies to the Commonwealth that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Code of Virginia (Virginia Public Procurement Act).

1. During the performance of this Contract, the Publisher agrees as follows:

a. The Publisher will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Publisher. The Publisher agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Publisher, in all solicitations or advertisements for employees placed by on behalf of the Publisher, will state that the Publisher is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. For the purposes of this contract, the Publisher will include the provisions of subdivision 1 in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

C. Ethics In Public Contracting: By signing this Contract, the Publisher certifies that the submission of its proposal was made and the acceptance of this Contract is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other publisher, supplier, manufacturer or subcontractor in connection to its bid or proposal, and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

D. Section 2.2-4311.1 of the Code of Virginia and the Federal Immigration Reform and Control Act of 1986: The Publisher certifies that it does not and will not during the performance of this contract knowingly employ an unauthorized alien as defined in the Immigration Reform and Control Act of 1986 or otherwise violate the provisions of the Immigration Reform and Control Act of 1986.

E. Debarment Status: The Publisher certifies that it is not currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia, nor is it an agent of any person or entity that is currently debarred from submitting proposals on contracts by any agency of the Commonwealth of Virginia.

F. Antitrust: By entering into this Contract, the Publisher conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.

G. Drug-free workplace: During the performance of this contract, the Publisher agrees to (i) provide a drug-free workplace for the Publisher's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Publisher's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Publisher that the Publisher maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the contract.

H. Precedence of Terms: Subsections A through F, R and U of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

I. Invoices: Invoices for items ordered, delivered and accepted shall be submitted by the Publisher directly to the payment address shown on the purchase order or contract. All invoices shall show the state contract number or purchase order number.

J. Payment Terms: Any payment terms requiring payment in less than thirty calendar days will be regarded as requiring payment thirty calendar days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than thirty calendar days, however.

K. Payment to Subcontractors: The Publisher is hereby obligated:

1. To pay the subcontractor(s) within seven calendar days of the Publisher's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

2. To notify the agency and the subcontractor(s), in writing, of the Publisher's intention to withhold payment and the reason.

The Publisher is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the

Publisher that remain unpaid seven calendar days following receipt of payment from the Commonwealth, except for amounts withheld as stated in subdivision 2 of this subsection. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. The Publisher shall supply its federal employer identification number. These provisions apply to each sub-tier contractor performing under the primary contract and shall be included in their contract. The Publisher's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

L. Testing and Inspection: The Commission reserves the right to conduct any test or inspection it may deem advisable to assure supplies and services conform to the specification.

M. Assignment of Contract: This Contract is not assignable by the Publisher in whole or in part without the written consent of the Commission.

N. Changes to the Contract: Changes can be made to the Contract in any one of the following ways:

1. The Commission, after consulting with the Publisher, may order changes within the general scope of the contract at any time by written notice to the Publisher. Changes within the scope of the contract include, but are not limited to, things such as the method of packing or shipment and the place of delivery or installation. The Publisher shall comply with the notice upon receipt. The Publisher shall be compensated for any additional costs incurred as the result of such order and shall give the Commission a credit for any savings. Said compensation shall be determined by one of the following methods:

a. By mutual agreement between the parties in writing; or

b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Publisher accounting for the number of units of work performed, subject to the Commission's right to audit the Publisher's records or to determine the correct number of units independently; or

c. By ordering the Publisher to proceed with the work and to keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Publisher shall present the Commission with all vouchers and records of expenses incurred and savings realized. The Commission shall have the right to audit the records of the Publisher as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Commission within thirty calendar days from the date of receipt of the written order from the Commission. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia's Vendor's Manual. Neither the existence of a claim or a dispute resolution process, litigation or any other provision of this contract shall excuse the Publisher from promptly complying with the changes ordered by the Commission or with the performance of the contract generally.

2. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

O. Contractual Disputes: The publisher agrees that the Commission shall be the single entity with whom to resolve or negotiate any question or dispute concerning the proper interpretation of this Contract. Contractual claims, whether for money or other relief, shall be submitted in writing no later

than sixty calendar days after final payment; however, written notice of the contractor's intention to file such claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The Commission will render a final decision in writing within thirty calendar days after its receipt of the Publisher's written claim.

The Publisher shall not institute legal action prior to receipt of the Commission's decision on the claim, unless the Commission fails to render such decision within thirty calendar days. The decision of the Commission shall be final and conclusive unless the Publisher, within six months of the date of the final decision on the claim, invokes appropriate action under § 2.2-4364 of the Code of Virginia or the Administrative Appeals Procedure under § 2.2-4365 of the Code of Virginia.

Any dispute, claim or cause of action filed by Publisher (or any party making such claim on behalf of or under the rights of Contractor, his agent or subcontractor) shall be governed by §§ 2.2-4363, 2.2-4364, and 2.2-4365 of the Code of Virginia, and any period of limitation set forth therein.

During the pendency of any good faith dispute regarding the rights or duties of the Commonwealth under this Contract, the Commonwealth shall have the right to continue its disputed action or omission until the claims process is concluded. If it is then established that the Commonwealth's position was in error in whole or in part, the Publisher shall be compensated for its actual losses caused thereby and performance by all parties shall otherwise continue.

P. Default: In case of failure to deliver goods or services in accordance with the terms and conditions of this Contract, the Commission, after due oral or written notice, may procure them from other sources and hold the Publisher responsible for any resulting additional purchase and administrative costs. The remedy shall be in addition to any other remedies which the Commission may have.

Q. Taxes: Sales to the Commonwealth of Virginia are normally exempt from state sales tax. State sales use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall be free of federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

R. Sovereignty of State: Nothing in this Contract shall be construed as or operate as an express or implied waiver of the Commonwealth's sovereignty or Eleventh Amendment immunity or as a pledge of its full faith and credit.

S. Confidentiality: The Commonwealth will agree that when any software product has been developed by the Publisher or acquired from a third party at the Publisher's expense and is proprietary to the Publisher or such third party, that it shall hold and use the software product in the same manner as it would deal with its own confidential information. The Commonwealth shall not knowingly divulge, nor knowingly permit any of its employees, agents, or representatives to divulge, any propriety information with respect to the software product, the technology embodied therein, or any other proprietary documentation, models, descriptions, forms, instructions or other proprietary information relating thereto, except as specifically authorized by the Publisher, in writing, or as may be required by the laws of the Commonwealth of Virginia.

The Commonwealth shall take all reasonable steps necessary or appropriate to ensure compliance with this subsection by the Commonwealth and its employees, agents and representatives, including copying reproducible legends and markings on all physical components of the software product.

In the event of any disagreement between the parties regarding the status of any information or materials as proprietary or nonproprietary or in the event the Commonwealth proposes to take any action that the Publisher claims is inconsistent with its rights in connection with proprietary material, the Publisher shall immediately notify the Commonwealth of its intention to file a claim and shall, within ten working days after learning of the proposed action, file its claim under the Contractual Disputes clause seeking a formal decision of the Commission or other authority preventing the proposed action. Any claims not so presented shall be deemed waived.

T. Infringement Actions:

1. The Publisher, at its own expense, shall defend any suit brought against the Commonwealth, its agents, officers and employees for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Publisher's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Contract. In such suit, the Publisher shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

2. The Commission shall notify the Publisher of such suit within a reasonable time after learning of it and shall give the Publisher the full right and opportunity to conduct the defense of the suit, subject however to the requirements of §§ 2.2-510 and 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

3. The Publisher shall not be required to indemnify the Commonwealth for liability arising (i) solely out of the Commonwealth's own specifications or design or (ii) solely from the combination of equipment, software, materials or information furnished under this agreement with any equipment, software, materials or information not supplied by the Publisher or its subcontractors.

4. If any product or service becomes, or in the Publisher's opinion is likely to become, the subject of a claim of infringement, the Publisher may, at its option and expense, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at the Publisher's option and expense, may obtain the right for the Commonwealth to continue the use of such product or service. The option provided in this subsection shall not be construed as releasing or diminishing the Publisher's obligations under subdivision 1 of this subsection.

U. Nonappropriation: Any payment obligations in connection with this contract shall be subject to appropriated funds being available for expenditure for this purpose. Payments during subsequent fiscal periods shall be dependent upon the same action. In the event of non-appropriation of funds by the Legislature for the items under this contract, the Commonwealth will terminate the Contract by June 30th of the then current fiscal year. Written notice will be provided to the Publisher as soon as possible after legislative action is completed.

XIII. SPECIAL TERMS AND CONDITIONS

A. Customer Service.

1. Toll-free Line. The Publisher shall provide a toll-free telephone line for the purpose of (i) obtaining index assistance or current information status; (ii) passing along suggestions, problems, comments, etc.; and (iii) placing orders.

2. Bar Meetings. The Publisher shall have at least one representative at the annual State Bar meeting available to discuss and explain code matters to Bar members as well as to take orders for Code materials.

3. E-mail Address. The Publisher shall provide contact information to accommodate and encourage Code, Index and other suggestions from Code users.

4. Payment. The Publisher will make reasonable payment plans available for those buying Code materials. It shall also provide for purchases to be made through the use of major credit cards.

5. Marketing. The Publisher agrees to market the Virginia Administrative Code.

B. Trade Dress and Goodwill. The Commonwealth shall own all rights and interest in the trade dress and goodwill associated with all administrative code publications contemplated by this Contract, and the Publisher agrees that it will do nothing inconsistent with such ownership. The Commonwealth shall have the right to control the quality of the code publications. The Commonwealth acknowledges that the Publisher retains ownership of its trademarks. The Publisher shall identify to the Commission, in writing, any Publisher trademark or service mark proposed to be included on or in any Code publication and shall obtain the Commission's written approval before the use of such mark on any Code publication.

C. Copyright.

1. It is the intent of the parties to this Contract to grant to the Commonwealth, to the greatest extent permitted by § 30-147 of the Code of Virginia, complete and exclusive rights and ownership interest in the Administrative Code publications and in all copyrightable materials created in the performance of this Contract. In the event § 30-147 is later amended or repealed, the Publisher agrees retroactively to transfer to the Commonwealth any further rights as may be transferred consistent with such amendment or repeal. In the event any provision of this subsection C is held inconsistent with applicable law, the parties shall retroactively amend this Contract to accomplish the above intent to the fullest extent permissible.

2. The Publisher shall at its own expense take all necessary steps promptly to obtain and register all copyright rights in all copyrightable parts of the Administrative Code publications and in all other copyrightable materials created in the performance of this Contract. With respect to catchlines, historical citations (including, without limitation, source notes, citations to statutory authority and citations to the Virginia Register in which each regulation was originally published), numbers of sections, articles, chapters and titles, frontal analyses, reviser's or editor's notes, and all copyrightable material that is jointly created by the Publisher and the Commonwealth, the Publisher shall irrevocably assign all its rights therein to the Commonwealth, the Publisher shall register the copyright therein in the name of the Commonwealth, and the sole and exclusive worldwide ownership interest in those copyrights shall be held by the Commonwealth. With respect to any copyright rights not covered by the preceding sentence, the Publisher shall register all such rights in the Publisher's own name, but the Publisher shall, and by this Contract does, transfer to the Commonwealth an irrevocable, transferable, fully paid-up, perpetual license to use, publish, duplicate, distribute, modify, publicly display and publicly perform all works protected by such copyrights as well as any derivative works prepared therefrom. This license with respect to copyrights registered in the Publisher's name shall be the exclusive license within Virginia (the Publisher retaining no rights for itself in Virginia) and shall be nonexclusive in all other places.

3. The rights and licenses granted to the Commonwealth in this subsection C are perpetual and shall survive the expiration of this Contract. Further, in the event of any breach by the Commonwealth, the Publisher's remedies shall not include the right to rescind or otherwise terminate the rights and licenses provided to the Commonwealth by this subsection C.

4. By this Contract, the Commonwealth grants back to the Publisher an exclusive license to publish the Virginia Administrative Code (including all related supplements and replacement volumes)

in Virginia in any and all media in accordance with the terms and conditions of this Contract except: the Publisher shall be given exclusive rights only to the extent such rights are supported by applicable copyright law and obtained by the Commonwealth under paragraphs 1, 2 and 3 of this subsection C. The Publisher hereby acknowledges and agrees that nothing in this Contract shall prohibit the Commonwealth from complying with the Virginia Freedom of Information Act or similar laws, as the same may be amended from time to time.

In addition to the above exclusive copyright license, the Commonwealth agrees that the Code Commission shall not enter into a contract with any other entity to have such other entity publish a public domain version of the Virginia Administrative Code prior to the expiration or termination of this Contract. This restriction shall apply to the Code Commission only and shall not restrict the actions of other State agencies. In the event Publisher objects to any advertisement, publication or other action of a third party, Publisher shall pursue such enforcement options as Publisher deems appropriate and available against such third party and shall not call upon the Code Commission or the Commonwealth to take any action against such third party.

5. The license and rights granted by the Commonwealth as described in paragraph 4 of this subsection C shall continue for the duration of this Contract and shall expire upon the termination or expiration of this Contract. Upon any expiration of the license, all such rights shall revert to the Commonwealth, and the Publisher shall deliver to the Commonwealth an error-free electronic file in standard, machine-readable format containing the entire then-current version of the Administrative Code for unrestricted use by the Commonwealth.

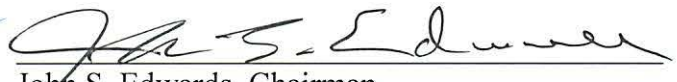
6. The Publisher agrees to execute and deliver such further documents as the Commonwealth may reasonably request for the purpose of acknowledging, implementing or recording the copyright interests that are to be retained or obtained by the Commonwealth pursuant to this subsection C. The Publisher further acknowledges and agrees that the license and rights obtained by it under this Contract are not transferable without prior written consent of the Commonwealth.

IN WITNESS WHEREOF, the parties have executed this Contract, consisting of 14 pages and two appendices, by their authorized representatives and as of the date and year referenced below.



Ellen Gillespie, Sr. Director
Contract Management
West, a Thomson Reuters business

Date: 4/29/13



John S. Edwards, Chairman
Virginia Code Commission
Commonwealth of Virginia

Date: 4-30-13

APPENDIX A

TEXT:

Page Trim Size:	6-5/8 x 9-5/8
Type Page Size:	30 x 50 picas including running head and folio
Type Style:	To follow South Carolina Code and Regulation style: Baskerville
Type Size:	Text: 11/12 Baskerville with 1 Em paragraph indent
Schemes:	9/10 Baskerville
Section Number:	14 Baskerville bold run-in with section head
Section Head:	11/12 Baskerville Bold upper and lower case with 1-1/2 line space above and 1/2 line space below
Case Notes:	9/10 Baskerville double column by 13-1/2 picas with 1 pica between columns
Case Note Head:	9/10 Baskerville bold upper case 1-1/2 line space above and 1/2 line space below center by full measure
Article Head:	11/12 Baskerville cap and small cap centered 1-1/2 line space above and 1 line space between article number and article title and 1 line space below
History or Amendment Notes:	9/10 Baskerville bold with 1 line space above
Cross Reference and Research Head:	9/10 Baskerville bold with 1 line space above; text paragraph indent 9/10 Baskerville
Running Heads:	11 Baskerville cap and small caps centered
Section Ears:	10 Baskerville bold 12 pt. space to text area
Folios:	9 Spectra bold 6 pt. space from text area
Paper:	35# English Finish 852 PPI
Foil:	No more than 3 colors - colors to be determined

INDEX:

Page size: 28 x 52
Trim size: 5.875 x 9.5
Font size: Headings/references = 9 pt.

APPENDIX B

1. Contents of the CD-ROM disc shall contain:
 - a. The full Code database;
 - b. Search and retrieval software; and
 - c. On screen help.
2. Documentation of the CD version shall include:
 - a. A learning guide;
 - b. A systems reference manual;
 - c. An installation guide; and
 - d. A quick reference card.
3. The product shall have the following features:
 - a. The ability to rapidly search for any words or numbers throughout the Code;
 - b. Full Boolean search (and, or, not) and positional (within a variable number of words);
 - c. Comprehensive, "merged" database;
 - d. Hypertext (linked) references between referencing and referenced material;
 - e. The ability to electronically extract portions from the Code and import those portions into a word processor;
 - f. A powerful, easy-to-learn user interface; and
 - g. The ability to print entire Code sections to an attached printer.

Agenda Item 5 - Recodification of Title 45.1

10: Virginia Coal Surface Mining
Control and Reclamation Act of 1979

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Page 1 of 69

1 CHAPTER ~~19~~ 10.

2 VIRGINIA COAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1979.

3 **Drafting note: Existing Chapter 19 is retained as proposed Chapter 10, consisting**
4 **of five articles: Article 1, General and Administrative Provisions; Article 2, Regulation**
5 **of Mining Activity; Article 3, Miscellaneous Provisions; Article 4, Abandoned Mine**
6 **Reclamation; and Article 5, Coal Surface Mining Reclamation Fund.**

7 Article 1.

8 General and Administrative Provisions.

9 **Drafting note: Existing Article 1, concerning general and administrative**
10 **provisions, is retained as proposed Article 1.**

11 ~~§ 45.1-226. Short title.~~

12 ~~This chapter shall be known as the "Virginia Coal Surface Mining Control and~~
13 ~~Reclamation Act of 1979."~~

14 **Drafting note: This section is deleted as unnecessary pursuant to § 1-244, which**
15 **states that throughout the Code the caption of a subtitle, chapter, or article serves as a**
16 **short title citation.**

17 ~~§ 45.1-227. Findings and policy.~~

18 ~~A. The General Assembly finds and declares that federal enforcement and~~
19 ~~administration of the regulatory program established by the federal Surface Mining Control~~
20 ~~and Reclamation Act of 1977 (Public Law 95-87), would not be in the best interests of the~~
21 ~~Commonwealth. It is the objective of the General Assembly to preclude, or minimize the~~
22 ~~adverse effects of federal enforcement, and to allow the regulation of coal surface mining to~~
23 ~~remain within the powers of the Commonwealth, to the fullest extent possible.~~

24 ~~It is the purpose of this chapter to enable the Commonwealth through its own~~
25 ~~instrumentalities, to enforce and administer the provisions of the federal program, in order to~~
26 ~~lessen federal enforcement and administration thereof.~~

27 ~~Nothing in this chapter, however, is intended, nor shall be construed, as expressing the~~
28 ~~Commonwealth's approval of or satisfaction with the standards or provisions contained in the~~

~~regulatory program of the federal act, so as to limit or affect any suit, action or other proceeding brought by the Commonwealth or any person, to invalidate, set aside or modify, in whole or part, the federal act or regulations promulgated thereunder.~~

~~B. The proper control of surface mining of coal so as to minimize or prevent adverse disruptions and the injurious effects thereof requires thorough planning in the selection of appropriate coal surface mining sites, methods of coal surface mining, and the nature and extent and the incorporation and use of control techniques and reclamation actions as an integral and simultaneous part of coal surface mining;~~

~~C. Because the Commonwealth's administrative agencies, through their experience of regulating coal surface mining, have developed a special expertise in the characteristics of coal surface mining in Virginia, as well as physical conditions in Virginia's coal mining areas, and because coal mining is such an important and integral element in the economy and culture of Virginia, it is in the best interest of the Commonwealth that the development, administration and enforcement of the provisions of the federal Surface Mining Control and Reclamation Act of 1977 be carried out by State officials and instrumentalities pursuant to a permanent State regulatory program and a State abandoned mine reclamation program approved by the Secretary of the Interior of the United States.~~

Drafting note: This section, which is currently not set out, is deleted as an unnecessary and nonstatutory policy statement in accordance with policies of the Code Commission. In addition, the interest of the General Assembly in providing that Virginia agencies administer and enforce requirements related to the federal Surface Mining Control and Reclamation Act of 1977 are now in place and incorporated into Title 45.1 (Mines and Mining).

~~§ 45.1-229~~ 45.2-xxx. Definitions.

~~The following words and phrases when As used in this chapter shall have the meaning respectively ascribed to them in this section except where, unless the context clearly requires a different meaning; the Director shall have the power to adopt by regulation such other definitions as may be deemed necessary to carry out the intent of this chapter.:~~

"Approximate original contour" means ~~that~~ the surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access ~~roads~~ road, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the Director determines that they are in compliance with the applicable performance standards ~~promulgated~~ adopted pursuant to this chapter.

"Coal surface mining and reclamation ~~operations~~ operation" means a surface mining ~~operations~~ operation and ~~all activities~~ any activity necessary and incidental to the reclamation of such ~~operations after March 20, 1979~~ operation.

"Coal surface mining ~~operations~~ operation" means ~~the following~~:

1. ~~Activities~~ Any activity conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of § ~~45.1-243~~ 45.2-xxx, any surface ~~operations~~ operation and surface ~~impacts~~ impact incident to an underground coal mine, the products of which enter commerce or the ~~operations~~ operation of which directly or indirectly ~~affect~~ affects interstate commerce. Such ~~activities include~~ activity includes (i) excavation for the purpose of obtaining coal, including by such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; (ii) the ~~uses~~ use of explosives and blasting; ~~and~~; (iii) in situ distillation or retorting, leaching, or other chemical or physical processing; and (iv) the cleaning, concentrating, or other processing or preparation; and loading of coal for interstate commerce at or near the mine site; ~~however~~. However, such ~~activities do~~ activity does not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 ~~2/3~~ and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal ~~explorations~~ exploration subject to § ~~45.1-233 of this chapter~~ 45.2-xxx; and

2. The ~~areas~~ area upon which such ~~activities occur~~ activity occurs or where such ~~activities disturb~~ activity disturbs the natural land surface. Such ~~areas shall also include~~ area includes (i) any adjacent land ~~the whose~~ whose use ~~of which~~ is incidental to any such ~~activities~~,

85 activity; (ii) all lands affected by the construction of any new ~~roads~~ road or the improvement
86 or use of any existing ~~roads~~ road to gain access to the site of such ~~activities~~ activity and for
87 haulage; and ~~excavations~~ (iii) any excavation, workings, ~~impoundments~~ impoundment, ~~dams~~
88 dam, ventilation ~~shafts~~ shaft, ~~entryways~~ entryway, refuse ~~banks~~ bank, ~~dumps~~ dump, ~~stockpiles~~
89 stockpile, overburden ~~piles~~ pile, spoil ~~banks~~ bank, culm ~~banks~~ bank, tailings, ~~holes~~ hole or
90 ~~depressions~~ depression, repair ~~areas~~ area, storage ~~areas~~ area, processing ~~areas~~ area, shipping
91 ~~areas~~ area, and other ~~areas~~ area upon which ~~are~~ is sited ~~structures~~ any structure, ~~facilities~~
92 facility, or other property or materials on the surface, resulting from or incident to such
93 ~~activities~~ activity.

94 "Division" means the Division of Mined Land Reclamation.

95 "Federal act" means the federal Surface Mining Control and Reclamation Act of 1977,
96 ~~Public Law~~ P.L. 95-87, 91 U.S. Stat. 445.

97 "Imminent danger to the health and safety of the public" means the existence in a coal
98 surface mining and reclamation operation of any condition ~~or~~ practice, or ~~any~~ violation of a
99 permit or other requirement of this chapter ~~in a coal surface mining and reclamation~~
100 ~~operation, which condition, practice or violation~~ that could reasonably be expected to cause
101 substantial physical harm to ~~persons~~ a person outside the permit area before such condition,
102 practice, or violation can be abated. A reasonable expectation of substantial physical harm,
103 including death or serious injury, before abatement exists if a rational person, subjected to the
104 same ~~conditions~~ condition or ~~practices~~ practice giving rise to the peril, would not expose
105 himself to the danger during the time necessary for abatement.

106 "Operator" means any person engaging in a coal surface mining ~~operations~~ operation
107 whether or not such coal is sold within ~~or without~~ the Commonwealth.

108 "Other minerals" means clay, stone, sand, gravel, metalliferous ~~and~~ or
109 nonmetalliferous ~~ores~~ ore, and any other solid material or ~~substances~~ substance of commercial
110 value excavated in solid form from natural deposits on or in the earth, exclusive of coal and
111 ~~those minerals which occur~~ any mineral that occurs naturally in liquid or gaseous form.

"Permit" means a permit issued by the Director pursuant to ~~the approved~~ state ~~regulatory program~~ regulations.

"Permit area" means the area of land indicated on the approved map submitted by the operator with ~~his~~ the operator's application, ~~which~~. Such area of land shall be covered by the operator's bond as required by § ~~45.1-241~~ 45.2-xxx and shall be readily identifiable by appropriate markers on the site.

"Permittee" means a person holding ~~a permit~~ any of the following permits issued by the Director: (i) a permit for coal surface mining pursuant to § ~~45.1-234~~ 45.2-xxx, (ii) a permit for coal exploration pursuant to § ~~45.1-233~~ 45.2-xxx, or ~~for an NPDES~~ (iii) a national pollutant discharge elimination system permit pursuant to § ~~45.1-254~~ 45.2-xxx.

"Person" means any individual, partnership, association, joint venture, trust, company, firm, joint stock company, corporation, ~~or any~~ other group or combination acting as a unit, or ~~any~~ other legal entity.

"Secretary" means the U.S. Secretary of the Interior ~~of the United States~~.

"State or local agency" means any department, agency, or instrumentality of the Commonwealth; ~~or any~~ public authority, municipal corporation, local governmental unit, or political subdivision of the Commonwealth; or ~~any~~ department, agency, or instrumentality of any public authority, municipal corporation, local governmental unit, or political subdivision of the Commonwealth, or two or more of any of the aforementioned.

"State ~~regulatory program regulations~~" ~~or~~ "means the permanent state regulatory program" ~~means the program~~ established by this chapter meeting the requirements of the federal act for the regulation of coal surface mining and reclamation operations within the Commonwealth, submitted to the Secretary pursuant to § 503 of the federal act.

"Unwarranted failure to comply" means the failure of a permittee (i) to prevent the occurrence of any violation of ~~his~~ its permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care; or ~~the failure~~ (ii) to abate any violation of such permit or ~~the~~ requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care.

Drafting note: The section, because it contains definitions, is relocated to the beginning of the chapter. The provision in the first sentence authorizing certain regulations is retained as a part of subsection A in proposed § 45.2-xxx [§ 45.1-230]. Technical changes are made, including the reordering of definitions into alphabetical order. An obsolete provision in the definition of "coal surface mining and reclamation operations" is proposed for deletion and an obsolete reference to a future "permanent state regulatory program" is proposed for deletion because it has been adopted.

~~§ 45.1-228~~ 45.2-xxx. Purpose ~~and policy~~ of chapter.

A. ~~It is the~~ The purpose ~~and policy~~ of this chapter is to ~~do the following~~:

1. Provide for the implementation and enforcement, by the Commonwealth, of the federal ~~Surface Mining Control and Reclamation Act of 1977,~~ act and the regulations of the ~~United States~~ U.S. Secretary of the Interior ~~promulgated~~ adopted thereunder, ~~and amendments thereto, as the same may be or become effective at any time or from time to time.~~

2. Promote the reclamation of coal-mined areas, and areas ~~which~~ that have been affected by such mining, ~~which~~ and that were not adequately reclaimed, or were abandoned, prior to the enactment of the federal ~~Surface Mining Control and Reclamation Act of 1977,~~ act and ~~which~~ that, in their unreclaimed condition, continue to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the public health or safety;

3. Exercise the police power of the Commonwealth in a coordinated statewide program to effectively control present and future problems associated with coal surface mining and provide for the reclamation of disturbed lands to ~~insure~~ ensure the protection of the public welfare and safety; and

4. Authorize and enable the Department to submit, and obtain approval ~~of,~~ for a ~~permanent~~ state regulatory program and abandoned mine reclamation program, pursuant to the federal ~~Surface Mining Control and Reclamation Act of 1977~~ act.

B. Nothing in this chapter is intended, ~~nor~~ or shall be construed, to limit, impair, abridge, create, enlarge, or otherwise affect, substantially or procedurally, the rights of any

person in any dispute involving property rights, including interests in water resources, or the right of any person to ~~damage~~ seek damages or other relief on account of injury to persons or property, including interests in water resources, and to maintain any action or other appropriate proceeding therefor, except as is otherwise specifically provided in this chapter; ~~nor~~. Nothing in this chapter is intended or shall be construed to affect the powers of the Commonwealth to initiate, prosecute ~~and~~, or maintain actions to abate public nuisances.

Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for clarity and modern usage and the single sentence of subsection B is divided into two sentences for clarity.

~~§ 45.1-253~~ 45.2-xxx. Certain mining operations exempt from this chapter.

The provisions of this chapter shall not apply to ~~any of the following activities~~ the extraction of coal:

1. ~~The extraction of coal by~~ By a landowner for his own noncommercial use from land owned or leased by him; ~~and~~ or

2. ~~The extraction of coal as~~ As an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the Director.

Drafting note: The section is relocated from existing Article 3. Technical changes are made.

~~§ 45.1-259~~ 45.2-xxx. Applicability of chapter to public agencies, utilities, and corporations.

Any agency, unit, or instrumentality of the Commonwealth, or of federal or local government, including any publicly owned utility or publicly owned corporation of federal, state, or local government, ~~which~~ that proposes to engage in coal surface mining operations ~~which~~ that are subject to the requirements of this chapter shall comply with the provisions of this chapter.

Drafting note: The section is relocated from existing Article 3. Technical changes are made.

§ ~~45.1-230~~ 45.2-xxx. Authority and duties of Director.

A. The authority to ~~publish and promulgate such~~ adopt regulations ~~as may be~~ necessary to carry out the purposes and provisions of this chapter is ~~hereby~~ vested in the Director. ~~Regulations~~ Such regulations shall be consistent with regulations ~~promulgated~~ adopted by the Secretary pursuant to the federal act or in conformity ~~to~~ with any court ruling construing such act. The Director may adopt by regulation definitions other than those provided in § 45.2-xxx [§ 45.1-229] as necessary to carry out the intent of this chapter. ~~In promulgating such~~ Unless otherwise directed by law, in adopting regulations, the Director shall ~~provide an opportunity for public comment, both oral and written, and shall give public notice of proposed regulations, in accordance~~ comply with the Administrative Process Act (§ 2.2-4000 et seq.) and the Virginia Register Act (§ 2.2-4100 et seq.).

~~A1.~~ B. In addition to the adoption of regulations under this chapter, the Director may ~~at his discretion~~ issue or distribute to the public interpretative, advisory, or procedural bulletins ~~or guidelines~~ pertaining to permit applications or to matters reasonably related thereto without following any of the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.). ~~The~~ Such materials shall be clearly designated as to their nature, shall be provided solely for purposes of public information and education, and shall not have the force of regulations ~~under this chapter or under any other provision of this Code.~~

~~B.~~ C. The authority to administer and enforce the provisions of this chapter is ~~hereby~~ vested in the Director. In administering and enforcing the provisions of this chapter, the Director shall exercise the following powers in addition to any other powers conferred upon him by law:

1. To supervise the administration and enforcement of this chapter; to make investigations and inspections necessary to ~~insure~~ ensure compliance with this chapter; to conduct hearings, administer oaths, issue subpoenas, and compel the attendance of witnesses and production of written or printed material as provided for in this chapter; to issue orders and notices of violation; to review and vacate or modify or approve orders and decisions; and to order the suspension, revocation, or withholding of any permit for failure to comply with

224 any ~~of the provisions~~ provision of this chapter or any ~~rules and regulations~~ regulation adopted
225 ~~thereunder~~ hereunder;

226 2. To administer the program for the purchase and reclamation of abandoned and
227 unreclaimed mine areas pursuant to Article 4 (§ ~~45.1-260~~ 45.2-xxx et seq.) ~~of this chapter~~;

228 3. To encourage and conduct investigations, research, experiments, and
229 demonstrations; and to collect and disseminate information relating to coal surface mining and
230 reclamation of lands and waters affected by coal surface mining;

231 4. To receive any federal ~~or~~ state ~~funds~~, or ~~any~~ other funds; and to enter into any
232 contracts for which funds are available to carry out the purposes of this chapter; and

233 5. To enter into cooperative agreements with the Secretary to regulate coal surface
234 mining on federal lands.

235 ~~C.~~ D. The Division of Mined Land Reclamation shall have the responsibilities
236 provided under this chapter and such duties and responsibilities as the Director may assign; or
237 as may be provided for in regulations ~~promulgated~~ adopted by the Director.

238 **Drafting note: A provision of existing § 45.1-229 regarding definitions is**
239 **relocated to proposed subsection A because it authorizes certain regulations. The term**
240 **"promulgate regulations" is changed to "adopt regulations" in keeping with recent title**
241 **revisions because "adopt" is more widely used and includes the promulgation process.**
242 **The proviso "unless otherwise directed by law" is added to the Administrative Process**
243 **Act and Virginia Register Act compliance requirement in subsection A to accommodate**
244 **any future exception contained in this Title. Language is updated for modern usage and**
245 **technical changes are made, including changes pursuant to § 1-227, which states that**
246 **throughout the Code any word used in the singular includes the plural and vice versa.**

247 § ~~45.1-256~~ 45.2-xxx. Training and certification of blasters.

248 A. In order to ensure that explosives are used only in accordance with applicable state
249 and federal laws, the Director is authorized to ~~promulgate~~ adopt regulations requiring the
250 training, examination, and certification of persons engaging in or directly responsible for
251 blasting or the use, storage, and handling of explosives in coal surface mining operations.

B. The Division shall assume primary responsibility for conducting the examinations and issuing the certificates for such persons in accordance with the regulations adopted pursuant to ~~subdivision A~~ of this section.

Drafting note: The section is relocated from existing Article 3. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made.

~~§ 45.1-231~~ 45.2-xxx. Conflicts of interest prohibited.

~~B.~~ A. For the purposes of this section, "financial interest" ~~shall include~~ includes a pecuniary interest accruing to an employee or to ~~his~~ the employee's spouse, minor ~~children~~ child, or other ~~relatives~~ relative living in the same household.

~~A.~~ B. No employee of the Department performing any function or duty under this chapter, shall have a financial interest in any underground or surface coal mining operation.

C. The Director shall ~~promulgate~~ adopt regulations ~~by which~~ for the monitoring and enforcement of the provisions of this section ~~will be monitored and enforced~~, including ~~provisions~~ regulations (i) for the filing and review of statements and supplements by employees concerning any financial interest ~~which~~ that may be affected by this section; (ii) for the hiring, transfer, and removal of employees consistent with the prohibition of this section; (iii) for the resolution of prohibited interests; (iv) for the confidentiality, protection, and disclosure to enforcement authorities of reporting statements; and (v) for such exemptions from the provisions of this section as may be consistent with federal law.

D. ~~[Repealed.]~~

~~E.~~ Judicial proceedings to enforce the provisions of this section may be brought by the Attorney General at the request of the Director.

E. Nothing in this ~~article~~ section shall be construed as repealing or amending any other ~~provisions~~ provision of law pertaining to conflicts of interest except that in cases of conflict, the provisions of this ~~article~~ section shall control.

Drafting note: Existing subsection B is relocated as subsection A in keeping with Code style that definitions are provided at the beginning of a section. The term "promulgate regulations" in subsection C is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In proposed subsection E, two references to "this article" are replaced with "this section" because this is the only section in this article that pertains to conflicts of interest.

~~§ 45.1-257. 45.2-xxx. Impeding Resisting~~, etc., Director or ~~agents a misdemeanor agent of the Director; penalty.~~

It ~~shall be~~ is a misdemeanor, punishable by a fine of not more than \$5,000 ~~or by~~ confinement in jail for not more than one year, or both, for any person, except as permitted by law, to willfully resist, prevent, impede, or interfere with the Director or any ~~of his agents agent of the Director~~ in the performance of duties pursuant to this chapter.

Drafting note: The section is relocated from existing Article 3. Language is updated for modern usage.

~~§ 45.1-232. Repealed.~~

Drafting note: Repealed by Acts 1984, c. 590.

§ 45.2-xxx. Coal Surface Mining Regulatory Fund created.

There is hereby created in the state treasury a special nonreverting fund to be known as the Coal Surface Mining Regulatory Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All fees collected pursuant to § 45.2-xxx [§ 45.1-235] or another provision of this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for administering coal surface mining state regulations.

Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

Drafting note: This section, with its nonreverting fund language for the Coal Surface Mining Regulatory Fund, is proposed to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. This section formally establishes the special fund referenced in proposed § 45.2-xxx [§ 45.1-235] in Article 2.

Article 2.

Regulation of Mining Activity.

Drafting note: Existing Article 2, concerning regulation of mining activity, is retained as proposed Article 2.

§ ~~45.1-233~~ 45.2-xxx. Coal exploration operations.

A. ~~Coal~~ Any coal exploration ~~operations which~~ operation that substantially ~~disturb~~ disturbs the natural land surface shall be conducted in accordance with exploration regulations ~~promulgated~~ adopted by the Director. Such regulations shall ~~include~~, at a minimum, (i) ~~the requirement~~ require that any person, prior to conducting any exploration under this section, ~~any person must~~ file with the Director notice of intention to explore ~~and such notice shall include that includes~~ a description of the exploration area and the proposed period of ~~supposed~~ exploration; and (ii) include provisions for the reclamation, in accordance with the performance standards established pursuant to § ~~45.1-242~~ 45.2-xxx, of all lands disturbed in exploration, including all excavations, roads, and drill holes, and for the removal of necessary facilities and equipment.

B. Information submitted to the Director pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information ~~which that~~ relates to the competitive rights of the person or entity intended to explore the described area shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be ~~available for public examination~~ disclosed.

C. Any person who conducts any coal exploration ~~activities which~~ activity that substantially disturbs the natural land surface in violation of this section or ~~regulations~~ any regulation issued pursuant thereto ~~shall be~~ is subject to the provisions of § ~~45.1-246~~ 45.2-xxx.

D. No person shall remove more than 250 tons of coal while engaged in a coal exploration ~~operations~~ operation without a specific written coal exploration permit issued by the Director.

Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. A cross-reference to the Virginia Freedom of Information Act is added in subsection B and the prohibition on making information available is replaced with a prohibition on disclosure for clarity. Language is updated for modern usage.

§ ~~45.1-234~~ 45.2-xxx. ~~Permits~~ Permit required for coal surface mining operation; ~~certain operations conducted pending initial administrative decision; time for application and action of Director thereon~~; term; transfer, etc.

~~A. On and after eight months from the date on which a permanent state regulatory program is approved for the Commonwealth by the Secretary, no~~ No person shall engage in or carry out any coal surface mining ~~operations~~ operation without having first obtained a permit to engage in ~~the operations~~ such operation issued by the Director; in accordance with ~~the approved state regulatory program, except that a person conducting coal surface mining operations under a valid permit issued by the Director pursuant to Chapter 19 (§ 45.1-226 et seq.) may conduct operations beyond the period if an application for a new permit has been filed in accordance with the provisions of this chapter, but the initial administrative decision has not yet been rendered. Operations so conducted pending an administrative decision shall be subject to the penalties and enforcement provisions of §§ 45.1-245, 45.1-246, 45.1-247,~~

361 ~~45.1-249, 45.1-250, and 45.1-251 and the penalty and enforcement regulations implementing~~
362 ~~those sections~~ regulations.

363 B. ~~No later than two months following the Secretary's approval of the state regulatory~~
364 ~~program, regardless of any litigation contesting that approval, all operators of coal surface~~
365 ~~mines expecting to operate such mines after the expiration of eight months from the~~
366 ~~Secretary's approval shall file an application for a permit with the Director. Such application~~
367 ~~shall cover those lands to be mined after the expiration of eight months from the Secretary's~~
368 ~~approval.~~

369 C. ~~Coal~~ Each coal surface mining ~~permits~~ permit issued pursuant to the requirements
370 of this chapter shall be for a term of five years. The rights granted under ~~a~~ such permit shall
371 not be transferred, assigned, or sold without the written approval of the Director in accordance
372 with regulations ~~promulgated~~ adopted by ~~him~~ the Director. The Director shall also ~~promulgate~~
373 adopt regulations, meeting the requirements of § 506 of the federal act, for longer permit
374 terms, successors in interest to the permittee, termination of the permit for failure to
375 commence ~~operations~~ operation, right of and procedure for permit renewal, and extension of
376 boundaries of a mining ~~operations~~ operation.

377 **Drafting note: Obsolete provisions regarding the future adoption of a regulatory**
378 **program, which has occurred, and the grandfathering of mining operations that existed**
379 **prior to the adoption of the regulatory program are proposed for deletion.**

380 § ~~45.1-235~~ 45.2-xxx. Form and contents of permit application; fee.

381 A. Application for a surface mining permit shall be made to the Division in the format
382 required by the Director and shall be signed and verified under oath by the person, ~~or his legal~~
383 ~~representative,~~ intending to engage in the surface mining of coal, or the person's legal
384 representative.

385 B. The application shall contain ~~such~~ the information ~~as shall be~~ required by
386 regulations adopted by the Director, including, ~~but not limited to,~~ the information required
387 under the provisions of § ~~507 (b)~~ 507(b) of the federal act.

C. To the extent that funds are available from the federal Office of Surface Mining Reclamation and Enforcement, the Director shall provide for permit application assistance to small operators as provided in § ~~507(e)~~ 507(c) and (h) of the federal act. Such assistance shall be provided in accordance with regulations adopted by the Director.

D. Each applicant for a permit shall be required to submit to the Division as part of the permit application an ~~operations~~ operation plan and a reclamation plan ~~which shall~~ that meet the requirements of this chapter and regulations ~~promulgated~~ adopted by the Director.

E. Each application for a coal surface mining permit issued under this chapter shall be accompanied by a fee of \$26 per acre for the area of land to be affected by the total operation for which plans have been submitted. ~~An anniversary~~ A payment of \$13 per acre for ~~areas~~ any area disturbed under the permit shall be payable annually on the anniversary date of the permit. All fees collected under the provisions of this ~~chapter~~ section shall be paid into ~~a special fund of the Department to be used for the administration of the coal surface mining regulatory program and are hereby appropriated for that purpose~~ the Coal Surface Mining Regulatory Fund created pursuant to § 45.2-xxx.

F. Each applicant for a coal surface mining permit shall file a copy of his application for public inspection at an appropriate public office approved by the Director where the mining is proposed to occur. However, information ~~which~~ that pertains only to the analysis of the chemical and physical property of the coal, excepting information regarding such mineral or elemental content ~~which~~ that is potentially toxic in the environment, shall be kept confidential upon request of the applicant and not made a matter of public record.

G. Each applicant for a coal surface mining permit shall ~~be required to~~ submit to the Division as part of the permit application a certificate issued by an insurance company authorized to do business in the Commonwealth, certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation ~~operations~~ operation for which such permit is sought. Such policy shall provide for personal injury and property damage protection in an amount, that is not less than that specified in regulations adopted by the Director, and is adequate to compensate any ~~persons~~ person who is injured or whose

property is damaged as a result of a surface coal mining and reclamation ~~operations~~ operation, including by the use of explosives, and who is entitled by law to compensation under applicable provisions of law. Such policy shall be maintained in full force and effect during the ~~terms~~ term of the permit ~~or~~ and any renewal, ~~and~~ including the length of all reclamation operations. The Director ~~is authorized to promulgate~~ may adopt regulations ~~which that~~ provide for the submission by the applicant of evidence of self-insurance, meeting the requirements of this subsection, in lieu of a certificate of a public liability insurance policy.

Drafting note: In subsection B, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In subsection C, the name of the federal Office of Surface Mining Reclamation and Enforcement is updated. In subsection E, reference to a special fund is changed to specify the Coal Surface Mining Regulatory Program Fund created in proposed § 45.2-xxx. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for clarity and modern usage.

§ ~~45.1-236~~ 45.2-xxx. ~~Operations~~ Operation and reclamation plans.

Each application for a coal surface mining permit pursuant to ~~the approved~~ state ~~regulatory program~~ regulations shall include an ~~operations~~ operation plan and a reclamation plan, in such form and containing such information as the Director ~~shall require and meeting the requirements of this chapter and regulations adopted by the Director~~ requires, including ~~but not limited to~~ the information required under § ~~508-(a)~~ 508(a) of the federal act, and meeting the requirements of this chapter and regulations adopted by the Director. ~~Operations plans~~ An operation plan shall not include underground workings. ~~The operations~~ An operation plan and a reclamation ~~plans~~ plan, as approved by the Director, shall be ~~an~~ integral ~~part~~ parts of the terms and conditions of ~~the~~ a coal surface mining permit.

Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The phrase "but not limited to" is removed pursuant to § 1-218,

which states that throughout the Code "'Includes' means includes, but not limited to."

Language is updated for modern usage.

§ ~~45.1-237~~ 45.2-xxx. Revision of permits.

A. 1. During the term of ~~the~~ a permit, the permittee may submit an application for a revision of ~~the~~ such permit, together with a revised ~~operations~~ operation plan and reclamation plan, to the Director.

2. An application for a revision of a permit shall not be approved unless the Director finds that reclamation as required by the federal act and ~~the permanent~~ state ~~regulatory~~ program regulations can be accomplished under the revised reclamation plan. The Director shall establish, by regulation, the period of time within which the revision shall be approved or disapproved, as well as ~~guidelines~~ parameters for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; however, any revisions ~~which~~ that propose significant alterations in the ~~operations~~ operation plan and reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

3. Any extension to the area covered by the permit, except an insignificant boundary ~~revisions~~ revision, ~~must~~ shall be made by application for another permit.

B. The Director shall, within a time limit prescribed in regulations ~~promulgated~~ adopted by him, review each outstanding ~~permits~~ permit and may require reasonable revision or modification of the permit provisions during the term of ~~such~~ any permit; however, such revision or modification shall be based upon a written finding and subject to notice and hearing requirements.

Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage.

§ ~~45.1-238~~ 45.2-xxx. Approval or denial of permit.

472 A. Upon the basis of a complete mining application and reclamation plan or a revision
473 or renewal thereof, as required by the federal act and pursuant to ~~the approved permanent~~
474 state ~~regulatory program~~ regulations, including public notification and opportunity for public
475 hearing, the Director shall grant, require modification of, or deny the application for a permit
476 in a reasonable time established by regulation and shall notify the applicant in writing. The
477 applicant shall have the burden of establishing that the application is in compliance with all of
478 the requirements of ~~the permanent~~ state ~~regulatory program~~ regulations. Within ~~ten~~ 10 days
479 after the granting of a permit, the Director shall notify the government officials in the ~~city or~~
480 county or city in which the area of land to be affected is located that a permit has been issued
481 and shall describe the location of the land.

482 B. No permit or revision application shall be approved unless the application
483 affirmatively demonstrates, and the Director finds in writing on the basis of the information
484 set forth in the application or from information otherwise available, which will be
485 documented in the approval and made available to the applicant, that:

486 1. The permit application is accurate and complete and that all the requirements of the
487 federal act and ~~the permanent~~ state ~~regulatory program~~ regulations have been complied with;

488 2. The applicant has demonstrated that reclamation as required by the federal act and
489 ~~the permanent~~ state ~~regulatory program~~ regulations can be accomplished under the
490 reclamation plan contained in the permit application;

491 3. ~~The~~ An assessment of the probable cumulative impact of all anticipated mining in
492 the area on the hydrologic balance has been made by the Director in accordance with
493 regulation, and the proposed operation has been designed to prevent material damage to
494 hydrologic balance outside the permit area;

495 4. The area proposed to be mined is not included within an area designated as
496 unsuitable for coal surface mining pursuant to this chapter ~~nor is it~~ or located within an area
497 under study for such designation in an administrative proceeding commenced pursuant to this
498 chapter, ~~unless in such an area as to which an administrative proceeding has commenced, the~~

~~applicant demonstrates that prior to January 1, 1977, he made substantial legal and financial commitments in relation to the operation for which he seeks a permit; and~~

5. In ~~cases where~~ any case in which the private mineral estate has been severed from the private surface estate, the applicant has submitted to the Director:

a. The written consent of the surface owner to the extraction of coal by surface mining methods; ~~or~~

b. A conveyance that expressly grants or reserves the right to extract ~~the~~ coal by surface mining methods; or

c. If the conveyance does not expressly grant the right to extract coal by surface mining methods, evidence that the surface-subsurface legal relationship ~~shall~~ will be determined in accordance with the laws of ~~this~~ the Commonwealth; ~~provided, however, that nothing. Nothing~~ herein shall be construed to authorize the Director to adjudicate any property rights ~~disputes~~ dispute.

C. The applicant shall file with ~~his~~ each permit application a schedule listing ~~any and~~ all notices of violations of the federal act, this chapter, and any law, rule, or regulation of the United States ~~or of this~~ the Commonwealth, ~~or of~~ any department or agency in the United States pertaining to air or water environmental protection, incurred by the applicant in connection with any coal surface mining operation during the three-year period preceding the date of application. The schedule shall also indicate the final resolution of ~~any~~ each such notice of violation. Where the schedule or other information available to the Director indicates that any coal surface mining operation owned or controlled by the applicant is currently in violation of ~~the laws~~ any law, rule, or regulation referred to in this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the authority, department, or agency ~~which~~ that has jurisdiction over such violation, ~~and no~~ No permit shall be issued to an applicant after a finding by the Director ~~after~~ following an opportunity for a hearing, that the applicant, or the operator specified in the application, controls or has controlled any mining ~~operations~~ operation with a demonstrated pattern of willful violations

of the federal act or this chapter of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the federal act or this chapter.

D. ~~In addition to finding the~~ If the Director finds an application in compliance with subsection B ~~of this section, if~~ and the area proposed to be mined contains prime farmland pursuant to ~~§ 507 (b) (16)~~ § 507(b)(16) of the federal act, the Director shall comply with applicable regulations issued by the Secretary in determining whether to issue a permit for such area.

Drafting note: Changes are made for clarity, including the insertion of the word "evidence" and the substitution of "will" for "shall" in subdivision B 5 c, the division of the last sentence in subsection C into two sentences, and the rephrasing of subsection D to avoid the implication that the Director is required to find an application in compliance with subsection B. In subdivision B 4, an obsolete provision regarding the grandfathering of a mining operation in an unsuitable area for which the applicant made legal and financial commitments prior to 1977 is proposed for deletion. Technical changes are made, including the replacement of "guidelines" with "parameters" and changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

~~§ 45.1-239~~ 45.2-xxx. Public participation in process of issuing or revising permits.

A. The Director shall establish, by regulation, procedures for the notification of and participation by the public and appropriate federal, state, and local governmental authorities in the process for issuing or revising coal surface mining permits, in accordance with § 513 of the federal act.

B. Any person having an interest ~~which~~ that is or may be adversely affected, or the officer or head of any federal, state, or local governmental agency or authority ~~shall have,~~ has the right to file written objections to the proposed initial or revised application for a permit for a coal surface mining operation with the Director within ~~thirty~~ 30 days after the last publication of the applicant's notice required by the regulation ~~promulgated~~ adopted pursuant

to subsection A ~~hereof~~. If no written ~~objections are~~ objection is filed and an informal hearing is requested, the Director shall then hold an informal hearing in the manner and location prescribed by regulation, unless ~~all the parties~~ every party requesting the informal hearing ~~stipulate~~ stipulates agreement prior to the requested informal hearing and ~~withdraw their~~ withdraws such request therefor.

Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage.

§ ~~45.1-240~~ 45.2-xxx. Decision of Director upon permit application; hearing; appeal.

A. The Director shall notify ~~the~~ each applicant for a permit within a reasonable time, as set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and ~~such~~ written objections ~~as may~~ that have been filed, of his written decision to approve or disapprove the application, in whole or in part, except that if an informal hearing has been held pursuant to § ~~45.1-239~~ 45.2-xxx, the Director shall issue to the applicant and the parties to the hearing his written decision within ~~sixty~~ 60 days of such hearings.

B. If ~~the~~ such application is approved ~~the~~, a permit shall be issued. If ~~the~~ such application is disapproved, specific reasons ~~therefor~~ shall be ~~set forth~~ given in the notification. Within ~~thirty~~ 30 days after the applicant is notified of the final decision of the Director on ~~the~~ such permit application, the applicant, or any person with an interest ~~which~~ that is or may be adversely affected, may request a hearing on the reasons for the final determination. The Director shall hold a formal adjudicatory hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.); and within ~~thirty~~ 30 days thereafter shall issue to the applicant and ~~all persons~~ every person who participated in the hearing the written decision of the Director granting or denying the permit in whole or in part and stating the reasons therefor. No person who presided at an informal hearing under § ~~45.1-239~~ 45.2-xxx shall

583 preside at the formal adjudicatory hearing or participate in the decision therein or any
584 administrative appeal therefrom.

585 C. Where a hearing is requested pursuant to subsection B-~~herein~~, the Director, under
586 such conditions as he ~~may prescribe~~ prescribes, may grant ~~such~~ temporary relief ~~as he deems~~
587 ~~appropriate~~ pending final determination of the proceedings if:

588 1. All parties to the proceeding have been notified and given an opportunity to be
589 heard on ~~a~~ any request for temporary relief;

590 2. The person requesting such relief shows that there is a substantial likelihood that he
591 will prevail on the merits of the final determination of the proceeding; and

592 3. Such relief will not adversely affect the public health or safety or cause significant
593 imminent environmental harm to land, air, or water resources.

594 D. Any (i) applicant, or ~~any~~ (ii) person ~~with~~ who has an interest ~~which~~ that is or may
595 be adversely affected and ~~who~~ has participated in the formal hearing as an objector, who is
596 aggrieved by the decision of the Director or by the failure of the Director to act within the
597 time limits specified in this chapter ~~shall have~~, has a right to judicial review in accordance
598 with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

599 **Drafting note: Language is updated for clarity and modern usage.**

600 ~~§ 45.1-241~~ 45.2-xxx. Performance bonds.

601 A. After a coal surface mining permit application has been approved, but before such
602 permit is issued, the applicant shall file with the Director, on a form prescribed and furnished
603 by the Director, a bond for performance payable to the Commonwealth and conditioned upon
604 the faithful performance of all the requirements of this chapter and the permit. The bond shall
605 cover that area of land within the permit area upon which the operator ~~will~~ plans to initiate
606 and conduct surface coal mining and reclamation operations within the initial term of the
607 permit. As each succeeding ~~increments~~ increment of coal surface mining and reclamation
608 operations ~~are~~ is initiated and conducted within the permit area, the permittee shall file with
609 the Director an additional bond ~~or bonds~~ to cover such ~~increments~~ increment in accordance
610 with this section. The amount of the bond required for each bonded area shall be determined

by the Director and shall (i) depend upon the reclamation requirements of the approved permit, ~~shall~~ and (ii) reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, ~~and shall be determined by the Director~~. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work ~~has to be~~ is performed by the Director in the event of forfeiture, but in no case shall the bond for the entire area under one permit be less than \$10,000.

B. Liability under ~~the~~ a performance bond shall be for the duration of the coal surface mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation as required under regulations ~~promulgated~~ adopted pursuant to § ~~45.1-242~~ 45.2-xxx. The bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth, except that the operator may elect to deposit cash, negotiable bonds of the United States ~~Government~~ or ~~of~~ the Commonwealth, or negotiable certificates of deposit of any bank organized for transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

~~D.~~ C. Cash or securities ~~so~~ deposited pursuant to subsection B shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.

~~C.~~ D. The Director may accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the United States. ~~The letters~~ Such letter of credit shall be irrevocable, and unconditional, shall be payable to the Department upon demand, and shall afford ~~to~~ the Department protection equivalent to a corporate surety's bond. Such letter of credit shall be provided on a form and in a format established by the Director. Nothing in this section shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit.

E. The issuer of ~~the~~ a letter of credit pursuant to subsection D shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the

insolvency or bankruptcy of the issuer, or alleging any ~~violations~~ violation of a regulatory ~~requirements which~~ requirement that could result in the suspension or revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to fulfill any of its obligations under the letter of credit for any reason, the issuer shall immediately notify the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy, insolvency, or the suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the Department, ~~and the~~. The Department shall then issue a notice to the permittee specifying a reasonable period, ~~which shall not exceed ninety~~ exceeding 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall immediately begin to conduct reclamation operations in accordance with ~~the~~ its reclamation plan. ~~Coal~~ No coal extraction ~~and or~~ coal processing ~~operations~~ operation shall ~~not~~ resume until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until an acceptable bond is posted. ~~The letter of credit shall be provided on the form and format established by the Director. Nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit.~~

F. The Director ~~is further authorized to~~ may develop and ~~promulgate~~ adopt an alternative system ~~that will~~ to achieve the objectives and purposes of the bonding program established under this section.

~~E.~~ G. The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the Director from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

Drafting note: The section is proposed for reorganization by placing the text of subsection D after the subsection to which it refers, subsection B; by moving general provisions regarding the letter of credit from the end of subsection C to the beginning of that subsection, where such letters are addressed; by separating provisions regarding

the failure of a letter of credit in proposed subsection D; and by separating a provision authorizing alternative systems in proposed subsection E. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.

§ ~~45.1-242~~ 45.2-xxx. Performance standards.

A. The Director shall, by regulation, establish performance standards ~~meeting that~~ meet the requirement of § 515 of the federal act ~~and, are~~ and are consistent with regulations adopted ~~thereunder~~ by the Secretary ~~thereunder which shall be, and are~~ applicable to all coal surface mining and reclamation operations, except as otherwise provided in this chapter.

B. Any permit issued pursuant to this chapter to conduct a coal surface mining ~~operations~~ operation shall require that such ~~operations meet~~ operation meets all applicable performance standards established by the Director.

C. The Director shall include, in ~~his~~ such regulations, special procedures and standards, consistent with regulations ~~promulgated~~ adopted by the Secretary, for the issuance of permits for ~~mountain-top~~ mountaintop removal operations, without regard to requirements to restore to approximate original contour, and for variances from such requirements for steep-slope operations.

~~D. Because of the diversity in terrain, climate, biologic, chemical and other physical conditions in Virginia, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for coal surface mining and reclamation operations should rest with the Commonwealth, and accordingly, the~~ The Director ~~is encouraged and authorized to develop and promulgate~~ may adopt, with the approval of the Secretary, alternative performance standards and procedures for administering and enforcing the program created pursuant to this chapter.

E. The Director, with the approval of the Secretary, may authorize departures on an experimental basis from the environmental protection performance standards ~~promulgated~~ adopted under this section and § ~~45.1-243~~ 45.2-xxx.

Drafting note: The superfluous and nonstatutory policy text of subsection D is proposed for deletion because it is obsolete, referring to future regulations that have been adopted. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.

~~§ 45.1-243~~ 45.2-xxx. Surface effects of underground coal mining operations.

A. The Director shall ~~promulgate~~ adopt regulations directed toward the surface effects of underground coal mining operations and embodying the requirements of §§ 516 and ~~720 (a) (1)~~ 720(a)(1) of the federal act. The provisions of this chapter relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to any surface ~~operations and~~ operation or surface ~~impacts~~ impact incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the ~~distinct difference~~ differences between surface and underground coal mining. Nothing in § ~~720 (a) (1)~~ 720(a)(1) of the federal act shall be construed to prohibit or interrupt any underground coal mining ~~operations~~ operation.

B. The ~~Director's~~ regulations adopted by the Director shall require that each permit ~~applicants~~ applicant submit hydrologic reclamation plans that include measures ~~that will be utilized~~ to prevent the sudden release of accumulated water from underground workings.

C. ~~In order to protect the stability of the land, the~~ The Director shall suspend underground coal mining under any elementary ~~and or~~ secondary ~~schools~~ school, ~~institutions~~ institution of higher education, urbanized ~~areas~~ area, ~~cities~~ city, ~~towns and communities~~ town, or community, and adjacent to any industrial or commercial ~~buildings~~ building, major ~~impoundments~~ impoundment, or permanent ~~streams~~ stream, if he finds imminent danger to ~~the inhabitants or occupants of the elementary and secondary schools, institutions of higher~~

~~education, urbanized areas, cities, towns and communities~~ people from such underground coal
mining.

**Drafting note: Subsection C is rephrased to clarify that any danger to people
caused by coal mining under or adjacent to certain locations is cause for suspension of
underground coal mining. Technical changes are made, including changes pursuant to §
1-227, which states that throughout the Code any word used in the singular includes the
plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-244~~ 45.2-xxx. Inspections and monitoring.

A. For the purpose of administering and enforcing any permit issued under this
chapter or ~~of~~ determining whether any person is in violation of any requirement of this
chapter or any regulation ~~promulgated~~ adopted hereunder:

1. The Director shall require any permittee to (i) establish and maintain appropriate
records; (ii) make monthly reports to the Division; (iii) install, use, and maintain any
necessary monitoring equipment or methods; (iv) evaluate results in accordance with such
methods, at such locations, and intervals, and in such manner as the Director ~~shall prescribe~~
prescribes; and (v) provide ~~such~~ other information relative to a coal surface mining and
reclamation ~~operations~~ operation as the Director deems reasonable and necessary;

2. For ~~those~~ any coal surface mining and reclamation ~~operations which remove~~
operation that removes or ~~disturb~~ disturbs strata that serve as aquifers ~~which~~ and thereby
significantly ~~insure~~ ensure the hydrologic balance of water use, either on or off the mining
site, the Director shall specify ~~those (i)~~ monitoring sites ~~to~~ at which the permittee shall record
(i) the quantity and quality of surface drainage above and below the mine site ~~as well as~~ and
in the potential zone of influence, ~~and to record~~; (ii) the level, amount, and characteristics of
samples of ~~ground water~~ groundwater and aquifers that are potentially affected by mining,
~~and also~~ or are located directly below the deepest coal seam to be mined; ~~and to record~~ (iii)
amount of precipitation; ~~and (ii)~~. The Director shall specify certain records of well logs and
borehole data to be maintained. The monitoring data collection and analysis required by this

section shall be conducted according to standards and procedures set forth in regulations ~~promulgated~~ adopted by the Director in order to assure their reliability and validity; and

3. ~~The~~ Any authorized ~~representatives~~ representative of the Director, without advance notice and upon presentation of appropriate credentials, ~~(i)~~ shall have (i) the right of entry to, upon, or through any coal surface mining and reclamation operation; and (ii) ~~shall have~~ the right to inspect any monitoring equipment, ~~any~~ method of exploration, ~~any~~ method of operation, or ~~any~~ records required by this chapter; and ~~shall have the right~~ to copy any such records.

No search warrant shall be required for any entry or inspection under this subsection, except with respect to entry into a building.

B. ~~The inspections~~ Inspections by the Director shall (i) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the coal surface mining and reclamation ~~operations~~ operation covered by each permit; (ii) occur without prior notice to the permittee or ~~his agents~~ any agent or ~~employees~~ employee of the permittee except for necessary on-site meetings with the permittee; and (iii) include the filing of inspection reports adequate to enforce the requirements of this chapter and ~~to~~ carry out ~~the its~~ terms and purposes ~~of this chapter~~.

C. Each permittee shall conspicuously maintain at the entrance to ~~the~~ each coal surface mining and reclamation operation a clearly visible sign setting forth such information as ~~shall~~ be is prescribed by regulation.

D. Each inspector, upon detection of ~~each~~ a violation of any requirement of this chapter or of ~~the regulations promulgated~~ a regulation adopted hereunder, shall ~~forthwith~~ promptly inform the operator in writing and shall report ~~in writing any~~ such violation to the Director in writing.

E. Copies of any records, reports, inspection materials, or information obtained by the Director under this article shall be made immediately available to the public at central and sufficient locations in the area of mining so that they are conveniently available to residents in such areas; ~~however~~. However, information ~~which~~ that pertains only to the analysis of the

chemical and physical properties of the coal, excepting information regarding mineral or elemental content ~~which~~ that is potentially toxic in the environment, shall be kept confidential and ~~not made a matter of public record~~ be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

Drafting note: Subdivision A 2 is reorganized for clarity, including by dividing the first sentence into two sentences. A cross-reference to the Freedom of Information Act is added and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage.

~~§ 45.1-245~~ 45.2-xxx. Enforcement of chapter generally.

A. ~~Whenever~~ If the Director ~~or his authorized representative~~ determines that any condition or ~~practices exist,~~ practice or ~~that~~ any violation by a permittee ~~is in violation~~ of any requirement of this chapter ~~or of any~~ regulation ~~promulgated~~ adopted hereunder, ~~or of any~~ permit condition, ~~which condition, practice or violation also~~ (i) creates an imminent danger to the health or safety of the public; ~~or~~ (ii) is causing; or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Director ~~or his authorized representative~~ shall immediately order a cessation of the coal surface mining and reclamation operation or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the Director ~~or his authorized representative~~ determines that the condition, practice, or violation has been abated; or until such order is modified, vacated, or terminated by the Director ~~or his authorized representative~~. Whenever the Director ~~or his authorized representative~~ finds that the ordered cessation of coal surface mining and reclamation operations, or any portion thereof, ~~will~~ is not expected to completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the Director shall, in addition to ordering the cessation ~~order~~ of the operation, impose affirmative obligations on the operator and

require ~~him~~ such operator to take whatever steps the Director ~~or his authorized representative~~ determines necessary to abate the imminent danger or the significant environmental harm.

B. ~~Whenever~~ If the Director ~~or his authorized representative~~ determines that ~~any a~~ permittee is in violation of any requirement of this chapter ~~or, any regulation thereunder~~ adopted hereunder, or any permit condition, but such violation does not create an imminent danger to the health or safety of the public, or cannot reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Director ~~or his authorized representative~~ shall issue a notice of violation to the permittee or his agent setting a reasonable ~~time but~~ period of not more than ~~ninety~~ 90 days for the abatement of the violation and shall provide an opportunity for public hearing. ~~If, upon~~

C. Upon expiration of the period of time ~~as~~ originally set pursuant to subsection B or subsequently extended for good cause shown upon the written finding of the Director ~~or his authorized representative~~, if the Director ~~or his authorized representative~~ finds that a violation has not been abated, he shall immediately order a cessation of coal surface mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Director ~~or his authorized representative~~ determines that the violation has been abated, or until such order is modified, vacated, or terminated by the Director ~~or his authorized representative~~ pursuant to subsection ~~D of this section~~ E. The Director ~~or his authorized representative~~ shall include in the cessation order the necessary measures to abate the violation in the most expeditious manner possible.

~~C.~~ D. Whenever the Director ~~or his authorized representative~~ determines that a pattern of violations of the requirements of this chapter, ~~or regulations promulgated thereunder any regulation adopted hereunder~~, or any permit ~~conditions exist~~ condition exists or ~~have~~ has existed, and if the Director ~~or his authorized representative~~ also finds that such violations are (i) caused by the unwarranted failure of the permittee to comply with any such requirements, or ~~that such violations are~~ (ii) willfully caused by the permittee, the Director ~~or his authorized representative~~ shall ~~forthwith~~ promptly issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a formal

public hearing. If a hearing is requested, the Director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Director ~~or his authorized representative~~ shall ~~forthwith~~ promptly suspend or revoke the permit.

~~D. Notices and order~~ E. Each notice or order issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the coal surface mining and reclamation operation to which the notice or order applies. Each notice or order shall be given promptly to the permittee or his agent by the Director ~~or his authorized representative issuing such notice or order~~, and ~~all such notices and orders~~ shall be in writing and signed by ~~such authorized representatives~~ the Director. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Director ~~or his authorized representative~~. Any notice or order issued pursuant to this section ~~which that~~ requires cessation of mining by the operator shall expire within ~~thirty~~ 30 days of actual notice to the operator unless an informal public hearing, ~~unless waived by the operator~~, is held at the site or close enough to the site to allow viewings thereof during the course of the public hearing. Such informal public hearing may be waived by the operator.

~~E.~~ F. The Director may institute a civil action for injunctive or other relief in any court of competent jurisdiction whenever any permittee or his agent, or any other person:

1. Violates, or fails or refuses to comply with any order or decision issued by the Director; ~~or~~

2. Interferes with, hinders, or delays the Director in carrying out the provisions of this chapter or the regulations ~~thereunder~~ adopted hereunder; ~~or~~

3. Refuses to admit ~~such authorized representative~~ the Director to ~~the~~ a mine; ~~or~~

4. Refuses to permit inspection of ~~the~~ a mine; ~~or~~

5. Refuses to furnish any information or report requested by the Director pursuant to the provisions of this chapter or the regulations ~~thereunder~~ adopted hereunder; ~~or~~

6. Refuses to permit access to, and copying of, such records as the Director determines necessary in carrying out the provisions of this chapter or the regulations ~~thereunder~~ adopted hereunder; or

7. Conducts any coal surface mining or coal exploration ~~operations~~ operation without first obtaining a permit, ~~or~~ after a permit has lapsed, or after suspension or revocation of a permit.

Drafting note: Changes are proposed for clarity, including the reorganization of existing subsection A and the addition of subsection designation C to the second paragraph of existing subsection B. The phrase "or his authorized representative" is proposed for deletion because such agent will be proposed for inclusion in the definition of "Director" in § 45.2-xxx in Chapter 1 [existing § 45.1-161.1 in Chapter 14.1]. Language is updated for clarity and modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process.

~~§ 45.1-246~~ 45.2-xxx. Civil and criminal penalties.

A. Any permittee who violates any permit condition or any other provision of this chapter or the regulations ~~thereunder~~ adopted hereunder may be assessed a civil penalty by the Director, except that if such violation leads to the issuance of a cessation order, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty shall not exceed \$70,000 for each violation. Each day of continuing violation may be deemed a separate violation for the purposes of assessing penalties. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular coal surface mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public;

whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

B. A civil penalty may be assessed by the Director only after the person charged with a violation has been given an opportunity for a public hearing. ~~Where~~ After such ~~a~~ public hearing has been held, the Director shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty ~~which~~ that is warranted, incorporating therein, when appropriate, an order ~~therein~~ requiring that the penalty be paid. When appropriate, the Director shall consolidate such ~~hearings~~ hearing with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act ~~(Chapter 40~~ (§ 2.2-4000 et seq.) ~~of Title 2.2)~~. When the person charged with such ~~a~~ violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Director after the Director determines that a violation has occurred and the amount of the penalty warranted, and issues an order requiring that the penalty be paid.

C. Upon the issuance of a notice or order charging that a violation described under subsection A ~~of this section~~ has occurred, the Director shall inform the permittee within 30 days of the proposed amount of the penalty. ~~The~~ Such permittee ~~charged with the penalty~~ shall ~~then have~~ within 30 days ~~to of being so informed~~, pay the proposed penalty in full or, if the permittee ~~wishes to contest~~ contests either the amount of the penalty or the fact of the violation, forward the proposed amount to the Director for placement in an interest-bearing trust account in the ~~State Treasurer's office~~ state treasury. Failure to forward the money to the Director within 30 days constitutes a waiver of all legal rights to contest the violation or the amount of the penalty. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty ~~should~~ will be reduced, the Director shall within 30 days of ~~that~~ such determination remit the appropriate amount to the permittee with accrued interest thereon. ~~Failure to forward the money to the Director within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.~~

D. If a permittee ~~who is~~ required to pay a civil penalty fails to do so, the Director may transmit a true copy of the final order assessing such penalty to the clerk of the court of any county or city wherein it is ascertained that the permittee owing the penalty has any estate; and the clerk to whom such copy is ~~so~~ sent shall record ~~it~~ such final order, as a judgment is required by law to be recorded, and ~~shall~~ index ~~the same as well~~ it in the name of the Commonwealth as of the person owing the penalty, ~~and thereupon~~. Upon such recording and indexing, there shall be a lien in favor of the Commonwealth on the property of the permittee within such county or city in the amount of the penalty. The Director may collect civil penalties ~~which~~ that are owed in the same manner as provided by law in respect to judgment of a court of record. All civil penalties shall be paid into a special fund in the ~~State Treasurer's office~~ state treasury to be used by the Director for enhancing conservation and recreational opportunities in the coal-producing counties of the Commonwealth. The Director shall transfer quarterly 50 percent of the fund balance to the Virginia Coalfield Economic Development Authority, created pursuant to Chapter 60 (§ 15.2-6000 et seq.) of Title 15.2, for the purposes of developing infrastructure and improvements at Breaks Interstate Park and 50 percent of the fund balance to the Virginia Coalfield Regional Tourism Development Authority for the purpose of developing conservation and recreational opportunities consistent with the provisions of Chapter 55 (§ 15.2-5500 et seq.) of Title 15.2.

E. Any person who willfully and knowingly (i) conducts any coal surface mining or coal exploration ~~operations~~ operation without first obtaining a permit, or after a permit has lapsed, or after suspension or revocation of a permit; ~~or~~ (ii) violates a condition of a permit issued pursuant to this chapter; or (iii) disregards, or fails or refuses to comply with ~~the regulations~~ any regulation adopted or ~~orders promulgated or~~ order issued pursuant to the provisions of this chapter, except an order incorporated in a decision under subsection B ~~of this section~~, shall, upon conviction, be punished by a fine of not more than \$10,000, by confinement in jail for not more than 12 months, or both.

F. Whenever a corporate permittee violates a condition of a permit or disregards, or fails, or refuses to comply with any order issued under this chapter, except an order

incorporated in a decision issued under subsection B ~~of this section~~, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal ~~shall be~~ is subject to the same civil penalties, fines, and confinement in jail ~~that to which a person~~ may be ~~imposed upon a person~~ subject under subsections A and E ~~of this section~~.

G. Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any required statement, representation, or certification, in any application, objection, record, report, plan, or other document filed or required to be maintained pursuant to this chapter, ~~the regulations promulgated thereunder~~ any regulation adopted hereunder, or any order or decision issued by the Director under this chapter shall, upon conviction ~~thereof~~, be punished by a fine of not more than \$10,000, ~~or~~ by confinement in jail for not more than 12 months, or both.

H. Any operator who within the period permitted for the correction of such violation fails to correct a violation for which a notice or order has been issued ~~within the~~ shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation occurs. Such period ~~permitted~~ for ~~its~~ the correction, ~~which period of a violation~~ shall not end until the entry of (i) a final order by the Director, in the case of any review proceedings initiated by the operator wherein the Director orders, after an expedited hearing, the suspension of the abatement requirements of the notice or order after determining that the operator ~~will~~ is likely to suffer irreparable loss or damage from the application of those requirements, or ~~until entry of~~ (ii) an order of the court, in the case of any review proceedings initiated by the operator wherein the court orders the suspension of the abatement requirements, ~~shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation occurs.~~

Drafting note: Organizational changes are proposed for clarity, including the moving of the last sentence in subsection C to a different location within that subsection and the moving of the last phrase in subsection H to a different location within that subsection. Language is updated for modern usage.

§ ~~45.1-246.1~~ 45.2-xxx. Citizen suits; rights of citizens to accompany inspectors.

A. Except as provided in ~~subsections~~ subsection B or C ~~of this section~~, any person having an interest ~~which~~ that is or ~~may~~ could be adversely affected may, in order to compel compliance with the provisions of this chapter, commence a civil action on his own behalf against:

1. The United States ~~or~~, any other governmental instrumentality or agency, or any ~~other~~ person ~~that is~~ alleged to be in violation of ~~the provisions~~ any provision of this chapter or of any ~~rule~~, regulation, order, or permit issued pursuant thereto; or

2. The Director, when there is alleged a failure of the Director to perform any act or duty under this chapter ~~which~~ that is not a discretionary ~~with~~ act on the part of the Director.

B. No action ~~may~~ shall be commenced under subdivision A 1 ~~of this section~~:

1. Prior to ~~sixty~~ 60 days after the plaintiff has given written notice of the violation to ~~(i)~~ the Secretary, ~~(ii)~~ the Director, and ~~(iii)~~ any alleged violator; or

2. If the Commonwealth ~~of Virginia~~ or the Secretary ~~of the Interior~~ has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or ~~this~~ the Commonwealth to require compliance with the provisions of this chapter, or any ~~rule~~, regulation, order, or permit issued pursuant to this chapter, provided, ~~however~~, that in any such action in a court of the Commonwealth, any person ~~may~~ is entitled to intervene as a matter of right ~~in any such action in a court of the Commonwealth~~;

C. No action ~~may~~ shall be commenced under subdivision A 2 ~~of this section~~ prior to ~~sixty~~ 60 days after the plaintiff has given written notice of such action to the Director, ~~in such~~ a manner ~~as shall be~~ prescribed by regulation, ~~provided, however, that~~ However, such action may be brought immediately after such notification in any case in which it is alleged that a violation or order would constitute an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

D. Any action with respect to a violation of this chapter or ~~the regulations thereunder~~ a regulation adopted hereunder may be brought only in the circuit court of the county or city in which the surface coal mining operation complained of is located. In any such action

commenced under the provisions of this section, the Director may intervene as a matter of right, whether or not ~~he~~ the Director is a party to the action.

E. The court, in issuing any final order in any action brought pursuant to subsection A ~~of this section~~, may award costs of litigation, including attorney and expert witness fees, to any party, ~~provided that~~ if the court determines such award is appropriate. If a preliminary injunction is sought, the court may require the filing of a bond or equivalent security in accordance with the rules of civil procedure.

F. Nothing in this section shall restrict any common-law or statutory right ~~which of~~ any person or class of persons ~~may have~~ to seek enforcement of any ~~of the provisions~~ provision of this chapter and the regulations ~~thereunder~~, adopted hereunder or to seek any other relief, including relief against the Director.

G. Any person who as a result of the violation by any operator of any ~~rule~~, regulation, order, or permit issued pursuant to this chapter, suffers injury to his person or property may bring an action for damages, including reasonable attorney and expert witness fees. Such action ~~may~~ shall be brought only in the circuit court of the county or city in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under ~~Title 65.2~~ the Virginia Workers' Compensation Act (§ 65.2-100 et seq.).

H. Whenever information provided to the Director by any person results in any inspection, the Director shall notify such person of the time at which the inspection is scheduled to occur, and such person shall be allowed to accompany the inspector during the inspection.

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

~~§ 45.1-247~~ 45.2-xxx. Forfeiture or release of performance bond.

A. The Director shall ~~promulgate~~ adopt regulations, consistent with regulations ~~promulgated~~ adopted by the Secretary, establishing procedures, conditions, criteria, and

schedules for the forfeiture or release of performance bonds or deposits required under this chapter; however, no bond shall be fully released until all reclamation requirements of this chapter and the regulations ~~thereunder~~ adopted hereunder are fully met.

B. Any person with a valid legal interest ~~which might~~ that could be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency ~~which~~ that (i) has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, ~~or (ii)~~ is authorized to develop and enforce environmental standards with respect to such operations, ~~shall have~~ has the right to file written objections to the proposed release from bond by the Director within ~~thirty~~ 30 days after the last publication of notice, as required by regulation. If a written ~~objections are~~ objection is filed, and a hearing requested, the Director shall inform all interested parties of the time and place of the hearing and hold a public hearing, either in the locality of the coal surface mining operation proposed for bond release, ~~or in Richmond,~~ at the option of the objector, within ~~thirty~~ 30 days of the request for such hearing.

C. Without prejudice to the rights of ~~the objectors~~ any objector, the applicant, or the responsibilities of the Director pursuant to this section, the Director may establish an informal conference, in accordance with regulations ~~promulgated~~ adopted pursuant to § ~~45.1-239-B~~ 45.2-xxx, to resolve written objections.

D. For the purpose of ~~such~~ the hearing specified in subsection B, the Director is authorized to administer oaths, subpoena witnesses, ~~or written or printed materials, compel~~ the attendance of witnesses, ~~or production of materials, and take evidence,~~ including ~~but not~~ limited to inspections of the land affected or other coal surface mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the Director.

Drafting note: In subsection D, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Language is updated for clarity and modern usage and technical

changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

§ ~~45.1-248~~ 45.2-xxx. Performance of reclamation operations by Director.

In the event of forfeiture of a performance bond, in whole or in part, the Director shall deposit the proceeds in the ~~State Treasurer's office~~ state treasury in a special fund to be used by the Director to complete the reclamation plan and other regulatory requirements pertaining to the operation for which the forfeited bond had been posted. The Director may use the resources and facilities of the Division or ~~he may~~ enter into contracts for performance of such reclamation with any individual, corporation, partnership, association, or ~~any~~ other legal entity, any soil conservation district, or any agency of the state or federal government. After completion of the reclamation and payment of all costs and administrative expenses associated with the completion of reclamation, any additional funds from the forfeiture of the bond shall be returned.

Drafting note: Language is updated for modern usage and technical changes are made.

§ ~~45.1-249~~ 45.2-xxx. Administrative review of notice or order issued under § ~~45.1-245~~ 45.2-xxx.

A. A permittee who is issued a notice or order pursuant to § ~~45.1-245~~ 45.2-xxx, or any person having an interest ~~which that~~ is or ~~may~~ could be adversely affected by such notice or order by any modification, vacation, or termination of such notice or order, may apply to the Director for the review of ~~the~~ such notice or order within ~~thirty~~ 30 days of the receipt thereof or within ~~thirty~~ 30 days of its modification, vacation, or termination. Upon receipt of such application, the Director shall cause such investigation to be made as he deems appropriate, ~~which~~. Such investigation shall ~~include an opportunity for a public formal hearing~~, at the request of the applicant or the person having an interest ~~which that~~ is or ~~may~~ could be adversely affected, include a public formal hearing to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the

modification, vacation, or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

B. Upon receiving the report of such investigation, the Director shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order complained of ~~and~~. Such order shall incorporate ~~his the Director's~~ findings ~~therein of fact~~. ~~When~~ If the application for review concerns an order for cessation of coal surface mining and reclamation operations issued pursuant to the provisions of subsection A or B of § ~~45.1-245~~ 45.2-xxx, the Director shall issue the written decision within ~~thirty~~ 30 days of the receipt of the application for review unless temporary relief has been granted by the Director pursuant to subsection C ~~of this section~~ or by a court pursuant to § ~~45.1-251~~ 45.2-xxx.

C. Pending completion of the hearing required by this section, the applicant may file with the Director a written request that the Director grant temporary relief from any notice or order issued under § ~~45.1-245~~ 45.2-xxx, together with a detailed statement giving reasons for granting such relief. The Director shall issue an order granting or denying such relief expeditiously. ~~Where~~ If the applicant requests relief from an order for cessation of coal surface mining and reclamation operations issued pursuant to subsection A or B of § ~~45.1-245~~ 45.2-xxx, the order on such a request shall be issued within five days of its receipt. The Director may grant such relief, under such conditions as ~~he may prescribe~~ the Director prescribes, if:

1. A hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

2. The applicant shows that there is substantial likelihood that the decision of the Director will be favorable to ~~him~~ the applicant; and

3. Such relief will not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air, or water resources.

D. Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to § ~~45.1-245~~ 45.2-xxx, the Director shall hold a public formal

hearing, unless waived by the permittee, after giving written notice of the time, place, and date thereof. Within ~~sixty~~ 60 days following the formal hearing, the Director shall issue and furnish to the permittee and ~~all~~ every other ~~parties~~ party to the hearing a written decision concerning suspension or revocation of the permit and reasons therefor. If the Director revokes the permit, the permittee shall immediately cease coal surface mining operations on the permit area and shall complete reclamation within a period specified by the Director, or the Director shall declare as forfeited the performance bonds for the operation.

E. The Director ~~is authorized to promulgate~~ may adopt regulations providing for the award of costs and expenses, including attorney fees, to any party to any administrative proceedings under this chapter, incurred by such person in connection with his participation in such proceedings, and ~~to~~ may assess such costs and expenses against any other party, ~~as may~~ be the Director deems proper. For the purpose of this subsection, ~~the term~~ "party" ~~shall include~~ includes the Commonwealth or any of its agents, officers, or employees.

Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for clarity and modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

~~§ 45.1-250~~ 45.2-xxx. Hearings.

~~A. [Repealed.]~~

~~B. All~~ Every formal ~~hearings~~ hearing shall be conducted in accordance with § 2.2-4020 unless the parties consent to informal proceedings. When a hearings officer presides, ~~he~~ such officer shall recommend findings and a decision to the Director, who shall then issue findings and a decision, unless ~~he~~ the Director provides for the making of findings and an initial decision by such hearings officer subject to review and reconsideration by the Director on appeal as of right or on the Director's own motion. Such regulations shall also provide for a

reasonable time in which such appeals shall be acted upon, which shall be in addition to the period required for the making of the initial decision.

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

§ ~~45.1-251~~ 45.2-xxx. Judicial review of final order or decision ~~or of~~ decision under § ~~45.1-263~~ 45.2-xxx.

A. Any party aggrieved by a final order ~~or~~ decision, ~~and any~~ or decision for entry upon property pursuant to § ~~45.1-263~~ 45.2-xxx, issued by the Director, after exhaustion of the administrative remedies provided for in this chapter, ~~shall have~~ has the right to the judicial review thereof in the circuit court of the county or city in which the land at issue or a major portion thereof is located. In all other respects, judicial review shall be in accordance with the provisions of the ~~Virginia~~ Administrative Process Act (§ ~~2.2-4020~~ 2.2-4000 et seq.).

B. The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Director. The court may, under such conditions as it ~~may prescribe~~ prescribes, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

1. All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

2. The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

3. Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

C. ~~To any proceeding under this section, the~~ The court may award costs and expenses, including ~~attorneys'~~ attorney fees, to any party to any proceeding under this section and ~~to~~ may assess such costs and expenses against any other party as the court ~~may deem~~ deems proper. For the purpose of this subsection, ~~the term~~ "party" ~~shall include~~ includes the Commonwealth or any of its agents, officers, or employees.

Drafting note: Language is updated for clarity and modern usage and technical changes are made.

§ ~~45.1-252~~ 45.2-xxx. Designating areas unsuitable for coal surface mining.

A. 1. The Director shall establish a planning process ~~enabling~~ that enables objective decisions, based on competent and scientifically sound data and information ~~as to,~~ regarding which, ~~if any,~~ land areas of the Commonwealth, if any, are unsuitable for ~~all or certain types of~~ coal surface mining operations pursuant to the standards set forth in subdivisions 2 and 3 ~~of this subsection but such.~~ Such designation shall not prevent the mineral exploration pursuant to this chapter of any area so designated.

2. Upon petition pursuant to subsection C ~~of this section,~~ the Director shall designate ~~an~~ a land area as unsuitable for all or certain types of coal surface mining operations if ~~he the~~ Director determines that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.

3. Upon petition pursuant to subsection C ~~of this section,~~ the Director may designate a surface area ~~may be designated~~ as unsuitable for certain types of coal surface mining operations if such operations will (i) be incompatible with existing land use plans or programs; ~~or~~ (ii) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific ~~and,~~ or aesthetic values ~~and or~~ natural systems; ~~or~~ (iii) affect renewable resource lands, including aquifers and aquifer recharge areas, in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or ~~of~~ food or fiber products, ~~and such lands to include aquifers and aquifer recharge areas;~~ or (iv) affect natural hazard lands, including areas subject to frequent flooding and areas of unstable geology, in which such operations could substantially endanger life and property, ~~such lands to include areas subject to frequent flooding and areas of unstable geology.~~

4. ~~Determinations~~ Any determination of the unsuitability of a land area for coal surface mining, ~~as provided for in~~ made pursuant to this section, shall be integrated as closely

as possible with present and future land use planning and regulation processes at the federal, state, and local levels.

5. The requirements of this section shall not apply to ~~lands~~ any land area (i) on which a coal surface mining ~~operations were~~ operation was being conducted on August 3, 1977, ~~or;~~ (ii) on which a coal surface mining operation was being conducted under a permit issued pursuant to the provisions of the federal act; ~~or~~ (iii) where substantial legal and financial commitments in either such operation were in existence prior to January 4, 1977.

B. Prior to designating any land ~~areas~~ area as unsuitable for a coal surface mining ~~operations~~ operation, the Director shall cause to be prepared a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply of coal.

C. Any person having an interest ~~which that~~ is or ~~may~~ could be adversely affected ~~shall have~~ has the right to petition the Director to have an area designated as unsuitable for coal surface mining operations, or to have such a designation terminated. Such ~~a~~ petition shall contain allegations of facts with supporting evidence ~~which that~~ would tend to establish the allegations. Within ~~ten~~ 10 months after receipt of the petition, the Department shall hold a public hearing in the locality ~~of in which~~ the affected area is located, after appropriate notice and publication of the date, time, and location of the hearing. After a person having an interest ~~which that~~ is or ~~may~~ could be adversely affected has filed a petition ~~and but~~ before the hearing, ~~as~~ required by this subsection, any person may intervene by filing allegations of facts with supporting evidence ~~which that~~ would tend to establish the allegations. The Director shall issue and furnish to the petitioner and any other party to the hearing, within ~~sixty~~ 60 days after such hearing, a written decision regarding the petition and the reasons therefor. In the event that all petitioners stipulate agreement prior to the hearing and withdraw their ~~request~~ requests, such hearing need not be held.

D. ~~On and after March 20, 1979, and subject~~ Subject to valid existing rights, no coal surface mining ~~operations~~ operation, except ~~those which were existing~~ an operation that existed on August 3, 1977, shall be permitted:

1. On any lands within the boundaries of ~~units~~ any unit of the National Park System, the National Wildlife Refuge ~~Systems~~ System, the National Trails System ~~of Trails~~, the National Wilderness Preservation System, or the Wild and Scenic Rivers System, including study rivers designated under § 5(a) of the Wild and Scenic Rivers Act ~~and;~~ any National Recreation ~~Areas~~ Area designated by act of Congress ~~and;~~ or any federal lands within the boundaries of any national forest, except as otherwise provided by federal law;

2. ~~Which~~ That will adversely affect any publicly owned park or ~~places included~~ any site listed in the National Register of Historic ~~Sites~~ Places unless approved jointly by the Director and the federal, state, or local agency with jurisdiction over the park or historic site;

3. Within 100 feet of the outside right-of-way line of any public road, except where a mine access ~~roads~~ road or haulage ~~roads join~~ road joins such right-of-way line ~~and except that the.~~ However, the Director may permit such ~~roads~~ mine access or haulage road to be relocated or the area affected to lie within 100 feet of such public road, if, after public notice and opportunity for hearing in the locality, a written finding is made that the interests of the public and landowners affected thereby will be protected; or

4. Within 300 feet ~~from~~ of any occupied dwelling, unless waived by the owner thereof, ~~nor;~~ within 300 feet of any public building, school, church, community, or institutional building, or public park, ~~;~~ or within 100 feet of a cemetery.

Drafting note: The names of the National Trails System and the National Register of Historic Places are corrected and the meaning of subdivision A 5 is clarified as referring to, among others, any land area on which a coal surface mining operation was being conducted under federal permit. An obsolete reference to March 20, 1979, is proposed for deletion from subsection D. References to January 4 and August 3, 1977, are retained because they could apply to current operations established earlier. Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

~~Miscellaneous Provisions~~ National Pollutant Discharge Elimination System Permit;
Replacement of Water Supply.

Drafting note: Existing Article 3, concerning miscellaneous provisions, is retained as proposed Article 3. Existing §§ 45.1-253, 45.1-256, 45.1-257, and 45.1-259 are relocated.

§ ~~45.1-254~~ 45.2-xxx. National ~~pollutant discharge elimination system~~ Pollutant Discharge Elimination System permits.

~~H. A.~~ A. For the purpose of this section, ~~the terms "sewage,"~~
"Board" means the State Water Control Board.

~~"industrial-Industrial wastes" and~~ means the same as that term is defined in § 62.1-
44.3.

"NPDES" means the National Pollutant Discharge Elimination System.

~~"other-Other wastes" shall have~~ means the same as that term is defined in § 62.1-44.3.

"Sewage" means ~~the meanings ascribed to them~~ same as that term is defined in § 62.1-44.3.

~~A. B.~~ A. B. The authority to issue, amend, revoke, and enforce ~~national pollutant discharge elimination system~~ National Pollutant Discharge Elimination System permits under the State Water Control Law (§ 62.1-44.2 et seq.) for the discharge of sewage, industrial wastes, and other wastes from coal surface mining operations, to the extent delegated by the U.S. Environmental Protection Agency and required under the federal Clean Water Act, P.L. 92-500, as amended, is vested solely in the Director, notwithstanding any provision of law contained in Title 62.1, except as provided ~~herein~~ in this section. For the purpose of enforcement under this section, the provisions of §§ 62.1-44.31 and 62.1-44.32 shall apply to permits, orders, and regulations issued by the Director in accordance with this section.

~~B. C.~~ B. C. The Director shall transmit to the State Water Control Board a copy of each application for ~~a national pollutant discharge elimination system~~ an NPDES permit received by the Director, and provide written notice to the ~~State Water Control~~ Board of every action related to the consideration of such permit application.

1276 ~~C.~~D. Prior to the issuance or reissuance of a permit, ~~applicants~~ each applicant shall
1277 submit an application on a form approved by the Director and a fee of \$300 for each discharge
1278 outfall point under ~~the~~ such permit. If an application is approved, the permittee shall, on the
1279 anniversary of the permit approval for each year of the permit term, submit \$300 for each
1280 discharge outfall point under ~~the~~ such permit. Each permit shall remain valid for five years.
1281 All fees provided for under this section shall be in addition to any other fees levied pursuant
1282 to this chapter.

1283 ~~D.~~E. No ~~national pollutant discharge elimination system~~ NPDES permit shall be
1284 issued if, within 30 days of the date of the transmittal of the complete application and the
1285 proposed ~~national pollution discharge elimination system~~ NPDES permit, the ~~State Water~~
1286 ~~Control~~ Board objects in writing to the issuance of such permit. Whenever the ~~State Water~~
1287 ~~Control~~ Board objects to the issuance of such permit under this section, such written objection
1288 shall contain a statement of the reasons for such objection and the effluent limitations and
1289 conditions ~~which~~ that such ~~permits~~ permit would include if it were issued by the ~~State Water~~
1290 ~~Control~~ Board.

1291 ~~E.~~F. An applicant who is aggrieved by an objection made under subsection ~~D~~ E of
1292 ~~this section shall have~~ has the right to a hearing before the ~~State Water Control~~ Board
1293 pursuant to § 62.1-44.25. If the ~~State Water Control~~ Board withdraws, in writing, its objection
1294 to the issuance of a certificate, the Director may issue the permit. Any applicant, aggrieved by
1295 a final decision of the ~~State Water Control~~ Board made pursuant to this subsection, ~~shall have~~
1296 has the right to judicial review in accordance with the provisions of the Administrative
1297 Process Act (§ 2.2-4000 et seq.).

1298 ~~F.~~G. Whenever, on the basis of any information available to it, the ~~State Water~~
1299 ~~Control~~ Board finds that any person is in violation of any condition or limitation contained in
1300 ~~a national pollutant discharge elimination system~~ an NPDES permit issued by the Director, it
1301 shall notify the person allegedly in ~~alleged~~ violation and the Director. If ~~beyond~~ after the
1302 thirtieth day ~~after~~ following notification by the ~~State Water Control~~ Board, the Director has

not commenced appropriate enforcement action, the ~~State Water Control~~ Board may take appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32.

~~G. H.~~ The Director shall ~~promulgate~~ adopt such regulations as deemed necessary for the issuance, administration, monitoring, and enforcement of ~~national pollutant discharge elimination system~~ NPDES permits for coal surface mining operations.

I. The Director, by examining the available and relevant data, shall determine whether a discharge ~~may~~ could cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard.

J. If a total maximum daily load (TMDL) has been established by the ~~State Water Control~~ Board for the receiving water body, then there shall be consideration of the TMDL in the reasonable potential determination as to whether a discharge ~~may~~ could cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard. If the receiving water body does not have a TMDL established, the Director may consider biological monitoring, chemical monitoring, and whole effluent toxicity testing to determine whether a discharge ~~may~~ could cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard. The Director may require whole effluent toxicity testing if he determines that the discharge adversely affects the biological condition of the receiving water body.

Drafting note: Subsection H, which contains definitions, is moved to the beginning of the section and the frequently recurring phrases National Pollutant Discharge Elimination System and State Water Control Board are given short references. Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

~~§ 45.1-255.~~

~~Repealed.~~

Drafting note: Repealed by Acts 1984, c. 714.

~~§ 45.1-255.1.~~

1331 ~~Repealed.~~

1332 **Drafting note: Repealed by Acts 1988, c. 489.**

1333 § ~~45.1-258~~ 45.2-xxx. Replacement of water supply.

1334 A. The operator of any coal surface mining operation shall replace the water supply of
1335 an owner of interest in real property who obtains all or part of ~~his~~ such owner's supply of
1336 water for domestic, agricultural, industrial, or other legitimate use from an underground or
1337 surface source where such supply has been affected by contamination, diminution, or
1338 interruption proximately resulting from such coal surface ~~mine~~ mining operation.

1339 B. ~~Underground~~ Every underground coal mining ~~operations conducted after October~~
1340 ~~24, 1992,~~ operation shall promptly replace any drinking, domestic, or residential water supply
1341 from a well or spring that was in existence prior to the application for a surface coal mining
1342 and reclamation permit ~~which~~ and that has been affected by contamination, diminution, or
1343 interruption resulting from underground coal mining operations. ~~Until amendments to the~~
1344 ~~regulations governing the permanent state regulatory program implementing the provisions of~~
1345 ~~this subsection are effective, the Director shall issue guidelines in accordance with subsection~~
1346 ~~A of § 45.1-230 regarding the replacement of any water supply pursuant to this subsection.~~
1347 Nothing in this subsection shall be construed to prohibit or interrupt underground coal mining
1348 operations.

1349 C. Each operator of an underground coal mine shall record the daily progress of
1350 mining operations on ~~a~~ one or more mine ~~map or~~ maps maintained at the mine site or in the
1351 company office. ~~The~~ Such map ~~or maps~~ shall, at a minimum, include information on the daily
1352 progress of mining operations ~~conducted after October 24, 1992,~~ and be maintained until the
1353 completion of the mining. The operator shall provide ~~the~~ such map ~~or maps~~ to the Division
1354 upon completion of mining and upon request of the Director.

1355 D. If the Director has ordered replacement of a water supply under subsection B ~~of~~
1356 ~~this section~~ and the operator subject to the order has failed to provide the required map ~~or~~
1357 ~~maps~~ in accordance with subsection C ~~of this section~~, then the Director's replacement order
1358 shall not be overturned absent clear and convincing evidence to the contrary. Upon conclusion

of an investigation, if the Director does not order replacement under the provisions of subsection B ~~of this section~~ and reasonable access for a pre-mining survey was denied, the Director's determination shall not be overturned absent clear and convincing evidence to the contrary.

~~E. Each operator of an underground coal mine shall provide a certificate issued by an insurance company licensed to do business in the Commonwealth certifying that the operator has a public liability insurance policy in force for the underground coal mining operation which shall provide for protection in an amount adequate to replace any water supply as required by subsection B of this section. The policy shall be maintained in full force during the term of the permit, including any renewal thereof, and including the liability period necessary to complete all reclamation operations under this chapter. The provisions of this subsection shall expire on the date the amendments to the regulations governing the permanent state regulatory program implementing the provisions of subsection B of this section are approved for the Commonwealth by the Secretary of the Interior of the United States.~~

Drafting note: Obsolete pre-1992 provisions are proposed for deletion from subsections B and C, and subsection E is proposed for deletion because it expired when state primacy was approved by the federal government on December 15, 1981. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

Article 4.

Abandoned Mine Reclamation.

Drafting note: Existing Article 4, concerning abandoned mine reclamation, is retained as proposed Article 4.

~~§ 45.1-260~~ [45.2-xxx](#). State Reclamation Program.

A. The Commonwealth's program for the reclamation of land and water adversely affected by past mining shall include the State Reclamation Plan and fund and annual reclamation projects, as provided for in this article.

B. The Director is authorized to develop and submit to the Secretary for ~~his~~ approval a State Reclamation Plan in accordance with the provisions of Title IV of the federal act and of this article. The plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the programmatic capability of the Division to perform such work, and shall include such regulations, policies, and procedures as may be necessary to establish and implement the plan and annual reclamation projects, and to carry out the provisions of this article. The Director may from time to time develop and submit to the Secretary amendments and revisions to the plan, consistent with this article.

C. The Director is authorized to:

1. ~~To prepare~~ Prepare and submit to the Secretary annual applications for the support of the State Reclamation Program and implementation of specific reclamation projects;

2. ~~To enter~~ Enter into agreements with the Secretary for the emergency restoration, reclamation, abatement, control, or prevention of the adverse effects of coal mining practices;

3. ~~To administer~~ Administer the State Reclamation Plan and the annual reclamation projects and ~~to~~ receive and administer grants from the Secretary therefor; and

4. ~~To prepare~~ Prepare and submit such information and reports as the Secretary ~~may request~~ requests.

D. The Director and the Department, in carrying out the functions of preparing and revising the State Reclamation Plan and developing annual reclamation projects, shall provide appropriate opportunities for public involvement.

Drafting note: Technical changes are made.

§ ~~45.1-261~~ 45.2-xxx. Abandoned Mine Reclamation Fund.

A. There is hereby created in the ~~State Treasurer's office~~ state treasury a special nonreverting fund to be known as the Abandoned Mine Reclamation Fund, referred to in this article as ~~the fund, which~~ "the Fund." The Fund shall be established on the books of the Comptroller and shall be administered by the Director.

B. ~~The fund shall consist of deposits, made from time to time, of:~~

~~1. Amounts~~ All funds granted by the Secretary for purposes of conducting the approved State Reclamation Plan and annual reclamation projects;

~~2. Use~~ use fees charged for uses of lands acquired or reclaimed pursuant to this article, after expenditures for maintenance have been deducted;

~~3. Moneys~~ moneys recovered through the satisfaction of liens filed against privately owned land pursuant to this article;

~~4. Moneys~~ moneys recovered from sale of lands acquired by the Director pursuant to this article; and

~~5. Donations~~ donations made for the purposes of this article and other moneys made available or appropriated to the Director for such purposes shall be paid into the state treasury and credited to the Fund.

C. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

D. Moneys ~~deposited~~ in the ~~fund~~ Fund shall be used ~~to carry~~ solely for the purpose of carrying out the State Reclamation Program as approved by the Secretary. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

Drafting note: The nonreverting fund language for the Abandoned Mine Reclamation Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Technical changes are made.

§ ~~45.1-261.1~~ 45.2-xxx. ~~Operators~~ Operator may perform reclamation; bidding; conditions; adjustment of required bonds; regulations.

A. Notwithstanding any licensing requirement under Title 54.1, an operator ~~shall be~~ is eligible to bid on contracts to conduct reclamation projects under the State Reclamation Program and the Coal Surface Mining Reclamation Fund in accordance with this article and Article 5 (§ ~~45.1-270.1~~ 45.2-xxx et seq.), ~~provided if~~ if the Director finds that the following

conditions have been met: (i) the operator has had at least three years of relevant mining experience in the Commonwealth pursuant to ~~Chapter 19 (§ 45.1-226 et seq.)~~ this chapter and (ii) the operator meets all other applicable requirements of federal, state, and local law.

B. Notwithstanding the provisions of Title 11 (§ 11-1 et seq.), the Director may adjust the ~~amount~~ amounts of required bid or performance bonds for such contracts upon a finding that such amounts are sufficient to protect the public interest.

C. The Director shall ~~promulgate~~ adopt regulations to implement this section.

Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

~~§ 45.1-262~~ 45.2-xxx. Eligible lands and water; priorities for expenditures.

A. Lands and water eligible for reclamation or drainage abatement expenditures under this article are those ~~which~~ that were (i) mined for coal or ~~which were~~ (ii) affected by ~~such~~ coal mining, waste banks, coal processing, or other coal mining processes, and were abandoned or left in an inadequate reclamation status and for which there is no continuing reclamation responsibility under state or federal ~~laws~~ law.

B. The Director shall establish priorities in the State Reclamation Plan for the expenditure of funds in conformance with the priorities set forth in § 403 of the federal act.

Drafting note: Technical changes are made.

~~§ 45.1-263~~ 45.2-xxx. Right of entry, acquisition, disposition, and reclamation of land adversely affected by past coal mining practices.

A. The Director shall take all reasonable actions to obtain written consent from the owner or owners of record of the land or property to be entered onto to perform an inspection for purposes of reclamation or for conducting studies or exploratory work pertaining to the need for and feasibility of reclamation, prior to such entry.

1470 B. ~~If~~ The provisions of subsection C shall apply if the Director, pursuant to an
1471 approved state program, makes ~~a finding~~ findings of fact that:

1472 1. Land or water resources have been adversely affected by past coal mining practices;

1473 2. The adverse effects are ~~at a state where~~ significant enough that, in the public
1474 interest, action to restore, reclaim, abate, control, or prevent such effects should be taken; and

1475 3. The owners of the land or water resources where entry ~~must~~ will be made to restore,
1476 reclaim, abate, control, or prevent the adverse effects of past coal mining practices (i) are not
1477 known; or readily available; or

1478 4. ~~The owners~~ (ii) will not give permission for the Director or his agents, employees,
1479 or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the
1480 adverse effects of past coal mining practices, ~~then, upon~~.

1481 C. Upon making the findings of fact required by subsection B and giving notice by
1482 certified mail to the owners if known or, if not known, by posting notice upon the premises
1483 and advertising once in a newspaper of general circulation in the ~~municipality or~~ county or
1484 city in which the land lies, the Director, his agents, employees, or contractors shall have the
1485 right to enter upon the property adversely affected by past coal mining practices and any other
1486 property to have access to such property to do all things necessary or expedient to restore,
1487 reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an
1488 exercise of the police power for the protection of public health, safety, and general welfare
1489 and shall not be construed as an act of condemnation of property ~~nor of~~ or trespass thereon.

1490 The moneys expended for such work and the benefits accruing to any such premises so
1491 entered upon shall be chargeable against such land to the extent provided in § ~~45.1-264~~, 45.2-
1492 xxx and shall mitigate or offset any claim in or any action brought by any owner of any
1493 interest in such premises for any alleged damages by virtue of such entry; ~~provided, however,~~
1494 ~~that this~~. Such provision regarding the mitigation or offsetting of a claim or action by an
1495 owner is not intended to create new rights of action or eliminate the existing sovereign
1496 immunity of the Commonwealth and its agents and employees.

~~C.~~D. The Director, and his agents, employees, or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property ~~nor~~ or trespass thereon.

~~D.~~E. The Director, pursuant to an approved state program, may acquire title in the name of the Commonwealth to any land or interest therein by purchase, donation, or condemnation, if such land or interest is adversely affected by past coal mining practices, after approval of the Secretary and upon ~~a determination~~ determinations that acquisition of such land is necessary ~~to~~ for successful reclamation; and that:

1. The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve ~~recreation and historic purposes~~ recreational, historical, conservation ~~and, or~~ or reclamation purposes or provide open space benefits; and

2. ~~Permanent~~ Either (a) permanent facilities, such as a treatment plant or a relocated stream channel, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

~~3. Acquisition~~ (b) acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

F. The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

~~E.~~G. The Director, with the approval of the Secretary, and in accordance with the State Reclamation Plan, may:

1. Transfer the administrative responsibility for land acquired under this section to any state, regional, or local agency, department, or institution, with or without cost, upon ~~such~~

terms ~~as~~ that will ~~insure~~ ensure that the use of the land is consistent with the authorization under which the land was acquired;

2. Sell land acquired under this section ~~which~~ that is suitable for industrial, commercial, residential, or recreational development, by public sale under a system of competitive bidding, at not less than fair market value and under ~~such~~ regulations ~~promulgated~~ adopted to ~~insure~~ ensure that such lands are put to proper use consistent with local, state, or federal land use ~~plan~~ plans, if any, for the area in which the land is located; and

3. Transfer land acquired under this section to the United States to be reclaimed by the Secretary ~~and after~~ After such reclamation is completed, any state, regional, or local agency, department, or institution may purchase such land from the Secretary for governmental, educational, recreational, historical, open-space, or other public ~~purposes~~ purpose upon such terms as the Secretary ~~may require~~ requires.

~~F.~~ H. Prior to the disposition of any land acquired under this section, the Director, pursuant to the State Reclamation Plan, when requested and after appropriate public notice, shall hold a public hearing in the ~~city or~~ county or city or ~~cities or~~ counties or cities where the land is located. The hearing shall be held at a time ~~which~~ that shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

~~G.~~ I. The Director may authorize the use, pending disposition, of land acquired under this section, for any lawful purpose that is not inconsistent with the reclamation and post-reclamation uses for which the land was acquired. The Director shall charge any user of the land a reasonable use fee, ~~which~~ that shall go toward the purpose of operating and maintaining improvement of the land, and any excess thereof shall be deposited in the State Reclamation Fund. The Director may waive the fee if ~~he~~ the Director finds in writing that a waiver is in the public interest.

~~H.~~J. Any state, regional, or local agency, department, or institution may purchase or otherwise acquire and develop lands~~which~~ that the Secretary is authorized to dispose of pursuant to § 407(h) of the federal act.

Drafting note: Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Proposed subsection E is reorganized for clarity.

§~~45.1-264~~ 45.2-xxx. Commonwealth to have lien for reclamation work.

The Commonwealth shall have a lien, if perfected as~~hereinafter~~ provided in § 45.2-xxx [§ 45.1-265], on land reclaimed by the Director pursuant to this article for the amount of the increase in the appraised market value of the land resulting from the reclamation,~~except that~~. However, no such lien shall attach to or be filed against the property of any person who owned the surface of the land prior to May 2, 1977, and who~~neither consented~~ did not consent to,~~nor participated~~ participate in,~~nor exercised~~ or exercise control over the mining operation~~which~~ that necessitated the reclamation performed under this article,~~nor~~. Nor shall any such lien attach to or be filed against any property if the Director waives the lien as ~~hereinafter~~ provided in § 45.2-xxx [§ 45.1-265].

Drafting note: Changes are proposed for clarity, including the division of the section's single sentence into three sentences and, to avoid ambiguity, the replacement of "hereinafter" with a more specific description in the first sentence and the last sentence. Language is updated for modern usage.

§~~45.1-265~~ 45.2-xxx. Perfection of lien; waiver of lien.

A. The Director shall perfect the lien given under the provisions of §~~45.1-264~~, 45.2-xxx by filing, within six months after completion of the reclamation, in the clerk's office of the court of the county or city in which the land or any part thereof is~~situate~~ located, a statement consisting of the~~names~~ name of the owner~~or owners~~ of record of the property sought to be charged;; an itemized account of moneys expended for the reclamation work,~~;~~ and; notarized copies of appraisals, made by an independent appraiser, of the fair market

value of the land both before and upon completion of the reclamation work²; and a brief description of the property to which the lien attaches.

B. The Director shall waive a lien if he determines that the direct and indirect costs of filing such lien ~~exceeds~~ exceed the increase in fair market value resulting from reclamation²; or that the reclamation primarily benefits health, safety² or environmental values of the community or area in which the land is located²; ~~or if~~ If reclamation is necessitated by an unforeseen occurrence, the Director shall waive a lien if he determines that the reclamation will not result in a significant increase in the market value of the land.

Drafting note: Language is updated for modern usage and technical changes are made by dividing the single sentence of subsection B into two sentences for clarity and a change made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

§ ~~45.1-266~~ 45.2-xxx. Recordation and indexing of lien; notice.

It ~~shall be~~ is the duty of the clerk in whose office the statement described in § ~~45.1-265~~ 45.2-xxx is filed to record ~~the same~~ such statement in the deed books of such office²; and to index ~~the same~~ such recording in the general index of deeds²; Such indexing shall be made in the name of the Commonwealth as well as the owner of the property²; and ~~showing~~ shall show the type of such lien. From the time of such recording and indexing, all persons shall be deemed to have notice thereof.

Drafting note: Language is updated for modern usage and technical changes are made.

§ ~~45.1-267~~ 45.2-xxx. Priority of lien.

~~Liens~~ Any lien acquired under this article shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

Drafting note: A technical change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

§ ~~45.1-268~~ 45.2-xxx. Hearing to determine amount of lien.

Any party having an interest in the real property against which a lien has been filed may, within ~~sixty~~ 60 days of such filing, petition the circuit court ~~of equity~~ having jurisdiction wherein the property or some portion thereof is located to hold a hearing to determine the increase in the market value of the land as a result of reclamation. After reasonable notice to the Director, the court shall hold a hearing to determine such increase. If the court determines such increase to be erroneously excessive, it shall determine the proper amount and order that the lien and the record be amended to show this amount.

Drafting note: The reference to a court of equity is updated to refer to a circuit court and technical changes are made.

~~§ 45.1-269~~ 45.2-xxx. Satisfaction of lien.

~~Liens~~ Any lien acquired under this article shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this section. If an owner fails to satisfy a lien as provided ~~herein~~ in this article, the Director may proceed to enforce the lien by a bill filed in a circuit court ~~of equity~~ having jurisdiction wherein the property or some portion thereof is located.

Drafting note: The reference to a court of equity is updated to refer to a circuit court and technical changes are made, including a change made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

~~§ 45.1-270~~ 45.2-xxx. Miscellaneous powers of Director.

A. In addition to any other remedies provided for in this chapter, the Director may petition any court of competent jurisdiction for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work pursuant to this chapter.

B. The Director is authorized, to the extent of funds available for the purposes herein, to construct and operate plants for the control and treatment of water pollution resulting from mine drainage. Such plants may include major interceptors and other facilities appurtenant to

~~the~~ each plant. No such control or treatment shall in any way be less than that required under the federal Clean Water ~~Pollution Control~~ Act.

C. The Director may transfer funds to other appropriate state or local agencies in order to carry out the reclamation authorized by this article.

Drafting note: The name of the Clean Water Act is updated and a technical change is made.

Article 5.

Coal Surface Mining Reclamation Fund.

Drafting note: Existing Article 5, concerning the Coal Surface Mining Reclamation Fund, is retained as proposed Article 5.

~~§ 45.1-270.1~~ 45.2-xxx. ~~Creation of~~ Coal Surface Mining Reclamation Fund.

There is hereby created in the ~~office of the State Treasurer~~ state treasury a special nonreverting fund to be known as the Coal Surface Mining Reclamation Fund, ~~hereinafter~~ referred to in this article as "the Fund, ~~which shall be administered as set forth in this article.~~" The Fund shall ~~consist of all~~ be established on the books of the Comptroller. All payments made into the Fund in accordance with the provisions of this article, ~~as well as all interest shall be paid into the state treasury and credited to the Fund. Interest~~ earned on ~~money contained~~ moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

Drafting note: The nonreverting fund language for the Coal Surface Mining Reclamation Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Technical changes are made.

~~§ 45.1-270.2~~ 45.2-xxx. Participation in Fund.

A. Participation in the Fund shall be open to ~~all operators~~ any operator applying for a permit under ~~Chapter 19 (§ 45.1-226 et seq.) of this title, this chapter~~ who can demonstrate to the Director a history of at least ~~a three~~ three consecutive ~~three-year history years~~ of compliance under this ~~act~~ chapter or any other comparable state or federal act.

B. Participation in the Fund ~~shall be~~ is optional as to each permit application, and approval of such participation by the Division, upon payment by the operator of all entrance fees to the Fund required by this article, shall constitute compliance with all requirements of § ~~45.1-241~~ 45.2-xxx and regulations issued pursuant thereto. Such participation shall relieve the operator of all bonding requirements except those set forth in this article. Nothing ~~herein in~~ this article shall preclude compliance with § ~~45.1-241~~ 45.2-xxx in lieu of participation in the Fund, prior to commencement of ~~the~~ such participation. Commencement of participation in the Fund, as to the applicable permit, ~~shall constitute~~ constitutes an irrevocable commitment to participate therein as to the applicable permit and for the duration of the coal surface mining operations covered thereunder.

C. For any mining ~~operations~~ operation bonded under this article, the total cumulative amount of exposed highwall shall not exceed 1,500 linear feet. The width of the coal pit shall be limited to two mining cuts or 500 feet, whichever is less, measured perpendicular from the most advanced highwall to the coal outcrop or to the nearest point of rough backfilling and grading.

D. The Director may allow extended distances for rough backfilling and grading beyond those established in this section ~~provided if~~ (i) the applicant can demonstrate to the Director a history of at least ~~a seven~~ consecutive ~~year history years~~ of compliance with this ~~act~~ chapter or with any other comparable state or federal act, or (ii) the applicant submits a bond for the proposed additional area. The additional bond shall be equal to the ratio of the extended distance to the distance specified in subsection C ~~above~~, times an approved cost estimate of reclamation prepared for the permit.

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

~~§ 45.1-270.3~~ 45.2-xxx. Initial payments into Fund; renewal payments; bonds.

A. ~~Operators~~ Any operator filing a permit ~~applications~~ application for a coal surface mining ~~operations~~ operation participating in the pool fund shall ~~be required to~~ pay into the Fund, as an entrance fee, a sum equal to \$1,000 for each applicable permit application. An entrance fee of \$5,000 shall be required of ~~all operators~~ each operator who ~~elect~~ elects to participate in the Fund ~~when~~ if the Director has determined that the total balance of the Fund is less than ~~\$1,750,000~~ \$1.75 million. The entrance fee shall be reduced to \$1,000 when the total Fund balance is greater than \$2 million. A renewal fee of \$1,000 shall be required of ~~all permittees~~ each permittee in the Fund at permit renewal.

1. For the purposes of this section, all planned expenditures shall be deducted from the balance of the Fund during each calendar quarter, including ~~forfeitures~~ any forfeiture on which engineering cost estimates have been prepared; but no money from the Fund has actually been expended ~~from the Fund~~.

2. ~~Should~~ If the actual expenditures from the Fund ~~be~~ are less than the engineering cost estimate, ~~then~~ the difference shall be credited to the balance of the Fund during the calendar quarter in which the final expenditure is made from the Fund to accomplish the reclamation.

B. In addition to the initial payments into the Fund described in subsection A ~~of this section, all operators that participate,~~ every operator who participates in the Fund shall furnish to the Fund a bond ~~which~~ that meets the criteria of ~~§ 45.1-241~~ 45.2-xxx and regulations issued pursuant thereto as follows:

1. For ~~those~~ an underground mining ~~operations~~ operation participating in the Fund prior to July 1, 1991, the amount of \$1,000 per acre covered by each permit. In no event shall such total bond be less than \$40,000, except that on ~~permits which have~~ a permit that has

completed all mining and for which a completion ~~reports have been~~ report was approved prior to July 1, 1991, the total bond shall not be less than \$10,000.

2. For an underground mining ~~operations~~ operation entering the Fund on or after July 1, 1991, and for any additional acreage bonded ~~on or~~ after ~~July 1, 1991~~ such date, the amount of \$3,000 per acre. In no event shall the total bond for such underground ~~operations~~ operation entering the Fund on or after July 1, 1991, be less than \$40,000.

3. For any other coal mining ~~operations~~ operation participating in the Fund prior to July 1, 1991, the amount of \$1,500 per acre covered by each permit. In no event shall such total bond be less than \$100,000, except that on ~~permits which have~~ a permit that has completed all mining and for which a completion ~~reports have been~~ report was approved prior to July 1, 1991, the total bond shall not be less than \$25,000.

4. For any other coal mining ~~operations~~ operation entering the Fund on or after July 1, 1991, and for any additional acreage bonded ~~on or~~ after ~~July 1, 1991~~ such date, the amount of \$3,000 per acre. In no event shall the total bond for such ~~operations~~ operation entering the Fund on or after July 1, 1991, be less than \$100,000.

C. All fees and payments provided in this article shall be in addition to initial permit application and anniversary payments provided pursuant to § ~~45.1-235~~ 45.2-xxx or any other payments required in compliance with this chapter.

D. Each Fund ~~participants~~ participant shall be allowed to post incremental bonds as set forth in § ~~45.1-241~~ 45.2-xxx. Such bonds ~~will~~ shall be posted in annual increments according to a schedule contained in the permit application and approved annually by the Director on the anniversary date.

E. Any mining operation participating in the Fund that has been in temporary cessation for more than six months as of July 1, 1991, shall within 90 days of that date post bond equal to the total estimated cost of reclamation for all portions of the permitted site ~~which~~ that are in temporary cessation. Any mining operation participating in the Fund that has been in temporary cessation for six months or less as of July 1, 1991, shall within 90 days after the date on which the operation has been in temporary cessation for more than six

months post bond equal to the total estimated cost of reclamation for all portions of the permitted site ~~which~~ that are in temporary cessation. Any mining operation participating in the Fund that enters temporary cessation on or after July 1, 1991, shall, prior to the date on which the operation has been in temporary cessation for more than six months, post bond equal to the total estimated cost of reclamation for all portions of the permitted site ~~which~~ that are in temporary cessation. Such bond shall remain in effect throughout the remainder of the period during which the site is in temporary cessation. At such time as the site returns to active status, the bond posted under this subsection may be released, ~~provided~~ if the permittee has posted bond pursuant to subsection B ~~of this section~~.

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

~~§ 45.1-270.3:1. Repealed.~~

Drafting note: Repealed by Acts 1991, c. 495.

~~§ 45.1-270.4~~ 45.2-xxx. Assessment of reclamation tax revenues for Fund.

A. There is hereby levied a reclamation tax upon the production of coal by ~~operators~~ each operator participating in the Fund under ~~permits~~ a permit issued under this chapter as set forth ~~herein~~ in this article.

B. Thirty days after the end of each calendar quarter during which the total balance of the Fund, including interest thereon, is less than \$20 million, ~~all operators~~ each operator shall pay into the Fund an amount equal to:

1. Four cents per clean ton of coal produced by a surface mining operation permitted under this chapter;

2. Three cents per clean ton of coal produced by a deep mining operation permitted under this chapter; and

3. One and one-half cents per clean ton of coal processed or loaded by a preparation or loading ~~facilities~~ facility permitted under this chapter.

C. At the end of each calendar quarter during which the total balance in the Fund, including interest thereon, exceeds \$20 million, payments under this section shall cease until again required pursuant to subsection B.

D. In no event shall any operator pay reclamation tax under this section on total coal production in excess of five million tons per calendar year, regardless of the number of permits held by that operator. In no event shall any operator holding more than one type of permit pay tax at a rate in excess of five and one-half cents per ton on coal originally-~~surface mined~~ surface-mined by that operator or in excess of four and one-half cents per ton on coal originally-~~deep mined~~ deep-mined by that operator. Any operator holding one permit upon which coal is mined and processed or loaded shall pay only the tax applicable under this section to the surface mining operation or deep mining operation.

Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

§ ~~45.1-270.5~~ 45.2-xxx. Collection of reclamation tax and penalties for nonpayment.

A. Payment of taxes under this section shall be made no later than ~~thirty~~ 30 days after the end of each calendar quarter when taxes are applicable in accordance with § ~~45.1-270.4~~ 45.2-xxx. The Division shall notify each operator holding a permit under ~~Chapter 19 (§ 45.1-226 et seq.) of this title~~ this chapter of those periods during which the taxes are applicable, ~~and shall~~ provide forms for reporting coal production figures subject to taxes, and ~~shall~~ collect all taxes for the Fund.

B. Pursuant to regulations ~~promulgated~~ adopted by the Director, and consistent with the provisions of § ~~45.1-248~~ 45.2-xxx, all funds paid into the Fund, and interest accrued to the Fund, shall be available for the completion of defaulted reclamation plans filed pursuant to § ~~45.1-236~~ 45.2-xxx. From the interest accrued to the Fund, amounts sufficient to properly administer the Fund are hereby appropriated to the Division. The Director shall also ~~promulgate~~ adopt regulations for the implementation of this article and for the collection of taxes hereunder.

C. The Division, upon advance written request to an operator, may audit the relevant books and records of the operator upon which taxes paid under this section are based. Failure to consent to a reasonable request for the audit shall be deemed a violation of this article by the operator.

D. Upon the failure of an operator to pay taxes when due under this section, the Division shall issue a notice of violation pursuant to [subsection B of § 45.1-245-B](#) [45.2-xxx](#). The notice of violation shall state that upon failure of payment within ~~fifteen~~ [15](#) days thereafter, the Division shall issue a cessation order to the operator for failure to abate the notice of violation. Upon the issuance of the cessation order, the enforcement procedures set forth in ~~§ 45.1-245 et seq.~~ [Article 2](#) shall apply. Civil penalties imposed upon an operator pursuant to a violation of this article shall be placed in the Fund.

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

~~§ 45.1-270.5:1~~ [45.2-xxx](#). Forfeiture of bonds on operations participating in the Fund; alternative remedies.

A. Forfeiture of bonds of ~~operations~~ [an operation](#) participating in the Fund shall be accomplished as set forth in ~~§ 45.1-247~~ [45.2-xxx](#) and the regulations ~~promulgated~~ [adopted](#) by the Director.

B. In addition to forfeiture, the Director may proceed against the permittee of ~~the a~~ [a](#) surface coal mining operation~~;~~ under the provisions of [subsection E of § 45.1-245-E](#), [45.2-xxx](#) by filing a civil action for injunctive or other relief in any court of competent jurisdiction to compel the permittee to perform the reclamation work in full compliance with this chapter, the regulations~~,~~ [and](#) ~~the~~ approved permit plans. Any injunctive relief shall be granted without the necessity of pleading or proving inadequate remedy at law or irreparable harm~~,~~ [and](#) no bond shall be required.

C. Proceedings under either subsection A or ~~subsection~~ B shall not constitute a waiver by the Director to proceed under the other subsection, nor shall the commencement of action under one subsection constitute an election to proceed solely under that subsection.

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

§ ~~45.1-270.6~~ 45.2-xxx. Reinstatement to the Fund; recovery of Fund expenditures.

A. An operator who has defaulted on any reclamation obligation and has thereby caused the Fund to incur reclamation expenses ~~as a result thereof~~ shall not be eligible to participate in the Fund thereafter until restitution for such default has been made. Compliance with this requirement shall be a prerequisite to the filing by the operator of any new permit application under this chapter but shall not affect the operator's ~~need~~ obligation to comply with all other requirements of this chapter in applying for a permit.

B. The Director may file a motion for judgment in any court of competent jurisdiction against the permittee to recover all moneys expended by the Fund to accomplish ~~the a~~ reclamation. Such expenditures shall include ~~but not be limited to~~ construction costs, engineering costs, administrative costs, and legal costs. In any action to recover these costs, the defendant ~~may~~ shall not relitigate the facts giving rise to the forfeiture ~~nor may the defendant or~~ defend by claiming the forfeiture was improper.

Drafting note: Language is updated for modern usage and technical changes are made. In subsection B, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to."

§ ~~45.1-270.7~~ 45.2-xxx. ~~Coal Surface Mining Reclamation Fund Advisory Committee continued as~~ Coal Surface Mining Reclamation Fund Advisory Board.

A. The ~~Coal Surface Mining Reclamation Fund Advisory Committee is continued and shall hereafter be known as the~~ Coal Surface Mining Reclamation Fund Advisory Board (the Advisory Board) is established as an advisory board in the executive branch of state

government. The purpose of the Advisory Board is to formulate recommendations for the Director concerning oversight of the general operation of the Fund.

B. The ~~Reclamation Fund~~ Advisory Board shall have a total membership of eight members that shall consist of seven nonlegislative citizen members and one ex officio member. Nonlegislative citizen members shall be appointed by the Governor and subject to confirmation by the General Assembly, as follows: at least four ~~of whom~~ shall represent the coal industry, one ~~of whom~~ shall be a representative of the Director, and two ~~of whom~~ shall represent conservation interests and ~~such~~ any other public ~~and or~~ private interests as ~~may be~~ are appropriate in accordance with Article V of the Interstate Mining Compact (§ ~~45.1-271~~ 45.2-xxx). The Director of the Division or his designee shall ~~be a continuing~~ serve ex officio with nonvoting ~~member of the Reclamation Fund Advisory Board~~ privileges and shall serve as Secretary ~~thereto~~ to the Advisory Board. Nonlegislative citizen members of the Advisory Board shall be citizens of the Commonwealth.

C. The ex officio member of the Advisory Board shall serve a term coincident with his term of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

~~B.-D.~~ D. The ~~voting nonlegislative citizen~~ members of the ~~Reclamation Fund~~ Advisory Board ~~shall initially be appointed for terms of one, two, three, four, and five years, such terms to be assigned by lot. Thereafter, all members~~ shall be appointed for five-year staggered terms. No person shall serve more than two consecutive terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

~~C.-E.~~ E. The ~~Reclamation Fund~~ Advisory Board shall annually elect a chairman and vice-chairman from among its membership and shall formulate rules for its organization and procedure. A majority of the members shall constitute a quorum.

1875 ~~D. F.~~ The ~~voting~~ nonlegislative citizen members of the ~~Reclamation Fund~~ Advisory
1876 Board shall serve without compensation or reimbursement for expenses incurred in the
1877 performance of their duties.

1878 ~~E. G.~~ The ~~Reclamation Fund~~ Advisory Board shall meet not less than twice each year
1879 ~~for the purpose of formulating recommendations to the Director concerning oversight of the~~
1880 ~~general operation of the Fund,~~ with such meetings held at the call of the chairman or
1881 whenever the majority of the members so request.

1882 H. The ~~Reclamation Fund~~ Advisory Board shall ~~report~~ have the following powers and
1883 duties:

1884 1. Report biannually to the Director and to the Governor on the status of the Fund ~~and~~
1885 ~~shall recommend;~~ and

1886 2. Recommend to the Director regulations or changes ~~thereto~~ to the Fund for the
1887 administration or operation of the Fund.

1888 I. The Department shall provide staff support to the Advisory Board. All agencies of
1889 the Commonwealth shall provide assistance to the Advisory Board, upon request.

1890 J. The Director, ~~in his discretion,~~ may adopt the recommendations of the ~~Reclamation~~
1891 ~~Fund~~ Advisory Board through regulatory action from time to time in accordance with the
1892 provisions of ~~Chapter 19 (§ 45.1-226 et seq.)~~ this chapter and otherwise in accordance with
1893 law.

1894 ~~F. K.~~ The ~~Reclamation Fund~~ Advisory Board shall serve as the advisory body required
1895 by Article V of the Interstate Mining Compact (§ ~~45.1-271~~ 45.2-xxx).

1896 **Drafting note: The membership and activity language for the Coal Surface**
1897 **Mining Reclamation Fund Advisory Board is updated to reflect preferred Code style.**
1898 **An obsolete reference to the Coal Surface Mining Reclamation Fund Advisory**
1899 **Committee is removed. Language is updated for modern usage and technical changes**
1900 **are made.**

1901 #

Agenda Item 6 - Review of 2020 Work Plan

2020 Code Commission Work Plan Proposed

Recodification of Title 45.1, Mines and Mining (DLS Staff: Scott Meacham and David Barry) - continuation from 2019; complete in 2020 for introduction into the 2021 Session of the General Assembly.

Approve next title for recodification - Code Commission approved Title 32.1 (Health); begin mid-way through 2020 interim as Title 45.1 concludes and continue through 2021 for introduction into the 2022 Session of the General Assembly. However, this may need to change. In 2018, the Commission approved Title 24.2 (Elections) for recodification beginning in the 2022 interim.

Obsolete laws and "Not Set Out" sections (DLS Staff) - Staff will present various sections of the Code of Virginia that were codified to set out in full in the Code. These are sections that were previously codified and assigned a section number but were not set out in full in the Code of Virginia. This item is a continuation of a review that was previously approved by the Commission; approximately 22 sections are left to review.

Background: Section 30-151 requires review of acts and statutes to identify obsolete provisions no less than every 4 years. The Code Commission conducts this study and makes recommendations to the General Assembly through legislation. In addition, the Code Commission has been reviewing Code of Virginia sections labeled "Not set out" to establish which sections should be set out, not set out, repealed, or amended. Approximately 25 "not set out" sections will be left after completion of the Title 45.1 (Mines and Minerals) recodification. The obsolete laws and not set out projects were combined in 2017.

Restructuring of § 54.1-3408 and related sections - (DLS Staff: Sarah Stanton). Review started in 2019 and is targeted to complete in 2020.

Code of Virginia; pricing and replacement volumes - Lexis will present a recommendation.

Administrative Law Advisory Committee - Reappointment of ALAC members and approval of work plan or recommendations. *ALAC was established to assist the Code Commission with oversight authority over the operation and effectiveness of the regulation promulgation process pursuant to the Virginia Administrative Process Act and Virginia Register Act.*

Rules of evidence - monitor updates to Virginia Supreme Court Rules of Evidence and modify Code of Virginia catchlines when necessary to include in the catchline of a Code section from which a rule in the Rules of Evidence has been derived a notation specifying that rule (per enactment clause 6 of c. 688 (2012 Acts)).

Example: § 18.2-67.7:1. Evidence of similar crimes in child sexual offense cases (Supreme Court Rule 2:413 derived from this section).

Contract expiration dates:

Code of Virginia (LexisNexis): expires August 31, 2026; renewable.

Virginia Administrative Code (West): expires April 30, 2024; renewable.

Virginia Register of Regulations (LexisNexis): expires June 2, 2022; renewable.

Code of Virginia Publishers Forum Access Agreement (West and LexisNexis): expires November 21, 2021; renewable. *Allows access to the Code Publishers Forum so noncontract publishers have access to the same information as the contract publisher. Chair approves renewals.*

Agenda Item 7 - Other Business

2020 Session of the General Assembly

Code Commission Bills

Bill No. and Patron	Subject	Status
HB 1340 Del. Leftwich	Property and Conveyances - technical corrections to Title 55.1 recodification	Enacted - Chapter 592
HB 1341 Del. Leftwich	Housing - set out § 36-85.4 and amend to remove purpose language (manufactured housing construction and safety standards law)	Enacted - Chapter 29
SB 442 Sen. Edwards	Elections - restructure polling place activities sections	Enacted - Chapter 561
SB 443 Sen. Edwards	Elections - restructure provisional voting sections	Enacted - Chapter 735
SB 444 Sen. Edwards	Elections - restructure recounts sections	Enacted - Chapter 886
SB 445 Sen. Edwards	Cemeteries - set out § 57-392 and amend to change population brackets to names of localities (abandoned cemeteries)	Enacted - Chapter 669
SB524 Sen. McDougle	Motor vehicles - repeal § 46.2-1580 and amend § 46.2-1582 regarding Consumer Protection Act authority (motor vehicle dealer advertising)	Enacted - Chapter 706
SB 525 Sen. McDougle	Motor vehicles - repeal §§ 46.2-1106 and 46.2-1107 (bus widths)	Enacted - Chapter 707
SB 527 Sen. McDougle	Motor vehicles - repeal 46.2-341.2 (intent and purpose of Commercial Driver's License Act)	Enacted - Chapter 788

Other Bills

Bill No. Patron	Subject	Status
HJ 114 Del. J. Jones	Code Commission Study - study and report on feasibility of a comprehensive revision of the Code of Virginia to be gender-neutral.	Left in House Rules; subcommittee recommended laying on the table

Agenda Item 7 - Other Business, con't

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Section 1 Bills Assigned Code Section Numbers or Placed in Existing Code Sections	
Chapter number (with links)	Text (text in red denotes change to add catchline or conform to Code of Virginia style)
108 and 109 (identical)	1. § 1. That the State <u>§ 22.1-16.7. Technical professional license with endorsement to teach military science.</u> The Board of Education shall amend its regulations to require that persons seeking a technical professional license with an endorsement to teach military science have either the appropriate credentials issued by the United States military or a recommendation from a Virginia employing educational agency.
307 and 308 (identical)	1. § 1. § 29.1-342.1. Waterfowl blinds in locality where bird hunting with firearms prohibited. The Department of Game and Inland Fisheries shall not license any stationary waterfowl blind in any area of Hunting Creek, Little Hunting Creek, or Dogue Creek in which the local governing body prohibits by ordinance the hunting of birds with a firearm.
339	1. § 1. § 22.1-17.7. Social-emotional learning guidance standards. The Department of Education shall (i) establish a uniform definition of social-emotional learning and develop guidance standards for social-emotional learning for all public students in grades kindergarten through 12 in the Commonwealth; (ii) make such standards available to each local school division no later than July 1, 2021; and (iii) issue a report no later than November 1, 2021, on the resources needed to successfully support local school divisions with the implementation of a statewide social-emotional learning program.
518 and 519 (identical)	1. § 1. § 56-90.2. Fair market valuations of water and sewer utility asset acquisitions. The State Corporation Commission (the Commission) shall establish rules governing petitions by an acquiring public utility that has elected to seek use of the fair market value of a municipal or other governmental selling utility's water or sewer assets to determine the initial rate base for the purpose of post-acquisition rate recovery. Such rules shall identify information to be filed in addition to all other filing requirements in the Utility Transfers Act (§ 56-88 et seq. of the Code of Virginia). Such rules shall: 1. Establish the process for determining the acquired water or sewer utility rate base, taking into consideration the use of the lesser of (i) the agreed-upon purchase price established during a voluntary arm's-length transaction by the selling and acquiring utilities and (ii) the fair market value established using the average of the valuations provided by three qualified and impartial utility valuation experts. 2. Provide for the acquiring utility to submit complete and unredacted copies of two qualified, independent, and impartial utility valuation expert's appraisals of the system assets to be acquired in compliance with the uniform standards of professional appraisal practices. The appraisals shall be treated confidentially. Such appraisals shall be completed and submitted in accordance with the following: a. One appraisal shall be sponsored by the public utility acquiring the utility system assets, and one appraisal shall be sponsored by the government entity selling the utility system assets. b. The qualifications of such utility valuation experts, specifically as they relate to water or wastewater utility systems, shall be clearly identified in the application. c. The appraisals shall clearly identify whether they are based on a cost, market, income, or other methodology. d. The appraisals shall quantify only the fair market value associated with assets that are to be currently used and useful in utility service. To the extent assets are acquired beyond those to be currently used and useful in utility service, a narrative shall be provided of the acquiring utility's intended purpose of such assets. e. Commission staff and other intervenors may seek discovery to confirm the reasonableness of such appraisals and may provide testimony and recommendations regarding such. f. When combined with a third appraisal sponsored by the Commission staff, the average of the three appraisals shall be deemed the fair market value for the purposes of this proceeding. The applicant may seek discovery to confirm the reasonableness of such appraisal and may provide testimony and recommendations regarding such. 3. Provide for the submission of a complete and unredacted copy of an assessment performed by a professional engineer licensed in Virginia, jointly retained by the acquiring and selling utilities, regarding tangible assets of the utility system to be acquired. Such assessment shall be used by the utility valuation experts as a basis for their valuations in determining fair market value and shall be treated confidentially. Such assessments shall be completed and submitted in accordance with the following:

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	<p>a. The qualifications of such licensed engineer, specifically as they relate to water and/or <u>or</u> wastewater utility systems, shall be clearly identified in the application.</p> <p>b. Commission staff and other intervenors may seek discovery to confirm the reasonableness of the assessment and may provide testimony and recommendations regarding such.</p> <p>c. To the extent assets are to be acquired beyond those to be currently used and useful in utility service, such assessment shall separately quantify only the assets that are to be currently used and useful in utility service.</p> <p>4. Provide that to the extent the proposed purchase price is different from that provided in the appraisals, the application shall identify such proposed purchase price.</p> <p>5. Provide for the acquiring utility to submit the proposed journal entries resulting from the proposed acquisition, including tax entries, including account numbers recognized by the National Association of Regulatory Utility Commissioners.</p> <p>6. Provide for the acquiring utility to submit an analysis identifying the qualitative and quantitative benefits and estimated customer rate impacts for the next five years as a result of the proposed acquisition for each of (i) the customers of the desired system and (ii) the legacy customers of the acquiring utility. Such analysis should clearly identify all assumptions relied upon.</p> <p>7. Provide that if depreciation rates for the acquired system are not based on a depreciation study:</p> <p>a. The acquiring utility may apply a three percent composite depreciation rate to the fair market value of the utility system assets acquired.</p> <p>b. A depreciation study on the acquired system shall be performed within five years of acquisition and provided for review by Commission staff. Upon acceptance of the depreciation rates by Commission staff for booking purposes, such rates shall be utilized for the system effective as of the date of the study.</p> <p>c. However, if the acquired system is of a size that would qualify under the Small Water or Sewer Public Utility Act (§ 56-265.13:1 et seq. of the Code of Virginia), such assets may be exempted from the requirement of performing a depreciation study.</p> <p>8. Establish the ability to evaluate and include reasonable transaction costs and fees of the utility valuation experts in the fair market value determination in addition to reasonable transaction and closing costs when establishing the rate base.</p> <p>9. Provide that the rate base value of the acquired system assets shall be the fees and costs of the utility valuation experts authorized by the acquiring and selling utilities in addition to reasonable transaction and closing costs, plus the lesser of (i) the purchase price negotiated between the acquiring utility and selling utility as the result of a voluntary arm's-length transaction and (ii) the fair market value for subsequent rate-making purposes in the acquiring utility's next base rate case.</p> <p>Nothing in the established rules shall be construed to relieve the petitioners from the duty to demonstrate adequate service to the public at just and reasonable rates that will not be impaired or jeopardized by granting the prayer of the petition as provided in § 56-90 of the Code of Virginia.</p> <p>Such rules shall be developed in coordination and consultation with industry experts and stakeholders and established by January 1, 2021.</p>
553	<p>1. § 1. That the § 51.5-177.1. Vocational rehabilitation and employment services for law-enforcement officers with a disability. A. The Department for Aging and Rehabilitative Services shall make information regarding vocational rehabilitation programs and employment services available to assist former law-enforcement officers who have a disability as a result of their service with preparing for, obtaining, and maintaining suitable employment, including information on the types of programs available and the process by which former law-enforcement officers who have a disability as a result of their service can access such programs and services, available to law-enforcement agencies in the Commonwealth.</p> <p>§ 2. That every B. Every law-enforcement agency in the Commonwealth shall provide to every law-enforcement officer who separates from the agency due to a disability resulting from his service information regarding vocational rehabilitation programs and employment services available to assist former law-enforcement officers who have a disability as a result of their service with preparing for, obtaining, and maintaining suitable employment, including information on the types of programs available and the process by which such law-enforcement officers may access such programs and services.</p>
565	<p>1. § 1. That the § 62.1-44.15:03. Disposal of fill; notice to locality. The Department of Environmental Quality (the Department) shall establish a process whereby any person that receives coverage under the General Virginia Pollutant Discharge Elimination System</p>

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	(VPDES) Permit for Discharges of Stormwater from Construction Activities and that will be transporting fill from a project site for disposal as part of its land-disturbing activities shall disclose to the Department the following information, which the Department shall disclose to every locality where such fill will be disposed of: (i) the source of the fill to be disposed of, (ii) the contents of the fill, and (iii) the location of the disposal.
599	<p>1. § 1. That the § 66-10.2. Board to establish regulations regarding youth detained in juvenile correctional facilities pursuant to contracts with the federal government. The Board of Juvenile Justice, in collaboration with the Department of Behavioral Health and Developmental Services, shall promulgate regulations governing the housing of youth who are detained in a juvenile correctional facility pursuant to a contract with the federal government and not committed to such juvenile correctional facility by a court of the Commonwealth. Such regulations shall establish:</p> <ol style="list-style-type: none"> 1. Standards that (i) govern the use of physical force, mechanical restraints, and spit guards and (ii) avoid the use of isolation; 2. Staff training requirements regarding cognitive behavioral interventions, trauma-informed care, cultural background implications, de-escalation techniques, and the use of physical and mechanical restraints; 3. Requirements for an appropriate number of bilingual staff and culturally relevant programs; 4. Methods to ensure that such youth detained understand their rights and responsibilities; 5. Standards to ensure the provision of necessary physical and mental health care; 6. A requirement that any contract entered into by a juvenile correctional facility with the federal government to house youth provide staff of the Department of Juvenile Justice with the same level of access to such youth that the Department would ordinarily have regarding any other youth committed to such facility; and 7. Standards for recordkeeping, including extended recordkeeping requirements for records and video footage related to reported incidents.
614	<p><i>Codify the first sentence as subsection B of § 54.1-3411.2:1:</i></p> <p>1. § 1. That the B. The Board of Pharmacy shall determine methods to enhance public awareness of proper drug disposal methods, which may include requirements for pharmacies or hospitals or clinics with an on-site pharmacy to provide such information to customers and the public through the provision of informative pamphlets, the posting of signs in public areas of the pharmacy, and the posting of information on public-facing websites.</p>
617	<p><i>Codify as subdivision 7 of § 54.1-3705:</i></p> <p>1. § 1. That the Board of Social Work shall 7. To pursue the establishment of reciprocal agreements with jurisdictions that are contiguous with the Commonwealth for the licensure of baccalaureate social workers, master's social workers, and clinical social workers. Reciprocal agreements shall require that a person hold a comparable, current, unrestricted license in the other jurisdiction and that no grounds exist for denial based on the Code of Virginia and regulations of the Board.</p>
662	<p><i>Codify as subsection E of § 56-585.1:</i></p> <p>1. § 1. Notwithstanding any other provision of law, the State Corporation Commission shall determine the amortization period for recovery of any appropriate costs due to the early retirement of any electric generation facilities owned or operated by any Phase I Utility or Phase II Utility, as such terms are defined in subdivision A 1 of § 56-585.1 of the Code of Virginia. In making such determination, the State Corporation Commission shall (i) perform an independent analysis of the remaining undepreciated capital costs; (ii) establish a recovery period that best serves ratepayers; and (iii) allow for the recovery of any carrying costs that the Commission deems appropriate.</p>
696	<p>1. § 1. § 22.1-17.02. Definition of "student with limited or interrupted formal education." A. The Department of Education shall develop and adopt a common statewide definition for the term "students student with limited or interrupted formal education" and shall require local school divisions to report the number of students who fall under such definition as part of the required data collection and reporting on average daily membership for the purposes of documenting any changes in such numbers over time.</p> <p>§ 2. B. The Board of Education shall evaluate the supports and programs available to "students with limited or interrupted formal education" in local school divisions to determine whether the calculations for the school quality indicators within the Board's Regulations Establishing the Standards for Accrediting Public Schools in Virginia (8VAC20-131-5 et seq.) are appropriate or whether changes in</p>

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	methodology could be made to more comprehensively measure the academic and nonacademic achievement of such student population. Such evaluation shall be completed to make the necessary revisions to impact the methodology for the calculation of school accreditation ratings for the 2021-2022 school year.
703	<p>1. § 1. That without limiting the powers of the Hampton Roads Transportation Accountability Commission (the Commission), established under Chapter 26 (§ 33.2-2600 et seq.) of Title 33.2 of the Code of Virginia, the § 33.2-2612. Additional tolling authority of the Commission.</p> <p>A. For the purposes of this section, "the facility" means the vicinity of the interchange of Interstate 64 and Jefferson Avenue to the interchange of Interstate 64, Interstate 264, and Interstate 664.</p> <p>B. The Commission shall, subject to the conditions provided in this act section, have the authority to impose and collect tolls on high-occupancy toll lanes on Interstate 64 in the facility. For the purposes of this act, "the facility" means the vicinity of the interchange of Interstate 64 and Jefferson Avenue to the interchange of Interstate 64, Interstate 264, and Interstate 664. The tolls shall be collected by an electronic toll system that, to the extent possible, shall not impede the traffic flow of the facility. The tolls authorized by this section may only be imposed on a portion of the facility that has been designated as high-occupancy toll lanes by the Commonwealth Transportation Board pursuant to § 33.2-502 of the Code of Virginia, and the amount of the tolls shall be varied by congestion level. All such tolls may be used for programs and projects that are reasonably related to or that benefit users of the facility and, without limiting the foregoing, may be used to pay the debt service on and related reserves and financing costs for, and pledged to support, bonds and other evidences of indebtedness the proceeds of which are or were used for construction or improvement of the facility.</p> <p>§ 2. That, prior C. Prior to the imposition of tolls pursuant to this act section, the Commission shall enter into an agreement with the Commonwealth Transportation Board and the Department of Transportation that (i) sets the standards for the operations of the facility, including the collection of tolls; (ii) addresses the use and application of toll revenues and toll-backed debt proceeds and the reimbursement of any funds expended by the Commonwealth Transportation Board or the Department of Transportation to convert any portion of the facility from high-occupancy vehicle lanes to high-occupancy toll lanes, as these terms are defined in § 33.2-500 of the Code of Virginia; and (iii) contains such other provisions deemed appropriate and necessary to ensure the safe and efficient operations of the general purpose and high-occupancy toll lanes on any portion of the facility where the Commission intends to exercise the authority provided in § 1 of this act subsection B.</p>
709	<p>1. § 1. That the § 54.1-2912.5. Standard of care pertaining to prenatal and postnatal and other depression; communication of information. The Board of Medicine shall annually issue a communication to every practitioner licensed by the Board who provides primary, maternity, obstetrical, or gynecological health care services reiterating the standard of care pertaining to prenatal or postnatal depression or other depression. Such communication shall encourage practitioners to screen every patient who is pregnant or who has been pregnant within the previous five years for prenatal or postnatal depression or other depression, as clinically appropriate and shall provide information to practitioners regarding the factors that may increase susceptibility of certain patients to prenatal or postnatal depression or other depression, including racial and economic disparities, and encourage providers to remain cognizant of the increased risk of depression for such patients.</p>
774	<p>1. § 1. § 22.1-273.4. Department of Education; guidance and resources; applied behavior analysis services. The Department of Education shall develop and publish no later than November 16, 2020, guidance and resources relating to the provision of applied behavior analysis (ABA) services in public schools for students who are in need of such services. Such guidance and resources may address (i) determining the need for and appropriateness of providing ABA services for students during the school day; (ii) considerations for school boards regarding management and monitoring of personnel who are not employed by the school board and who provide ABA services in public schools; (iii) the financial responsibilities related to hiring and retaining personnel who are not employed by the school board and who provide ABA services in public schools; (iv) developing agreements between such providers of ABA services, families, and schools; and (v) utilizing licensed behavior analysts employed by the school board to provide ABA services.</p>
796	<p>1. § 1. That the State Corporation § 56-577.1. Electric utilities; retail competition; pilot program. A. The Commission (the Commission) shall conduct a pilot program under which two or more nonresidential customers that, as of February 25, 2019, had filed applications seeking to aggregate their load pursuant to subdivision A 4 of § 56-577 of the Code of Virginia within the service territory of a Phase II Utility, as that</p>

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	<p>term is defined in subsection A of § 56-585.1 of the Code of Virginia, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell electric energy within the Commonwealth, subject to the following terms, conditions, and restrictions:</p> <p>a- 1. A pilot program shall be conducted within the certified service territory of the Phase II Utility in which such nonresidential customers are located.</p> <p>b- 2. The aggregated load participating in the pilot program shall not exceed 200 megawatts.</p> <p>c- 3. All customers participating in the pilot program shall be subject in all respects to the provisions of subdivision A 3 of § 56-577 of the Code of Virginia (, with participation in this pilot program being deemed to satisfy subdivision A 4 of § 56-577 of the Code of Virginia), and with the load set forth in each application being treated as a single, individual customer for purposes of said subdivision, and shall submit an annual report to the Commission by March 31 each year to demonstrate that, for the preceding calendar year, such load continued to meet the demand limitations of subdivision A 3 of § 56-577 of the Code of Virginia.</p> <p>§ 2- B. The Commission shall review the pilot program established pursuant to § 1 of this act <u>subsection A</u> in 2022.</p>
797	<p><i>Chapter 797 amends § 8 of Acts 2018, c. 296, cl. 2, which was codified as subsection H of 56-585.1:5; therefore, subsection H is amended to reflect Chapter 797.</i></p> <p>H. The provisions of this section shall not be construed to limit the ability of the Commission to approve additional applications for placement of transmission lines underground. Approval by the State Corporation Commission of a transmission line for inclusion in the program pursuant to § 2 of the second enactment of this act <u>subsection B</u> shall preclude the placement of future overhead electrical transmission lines of at least 69 kilovolts in the same right-of-way as described in § 2 of this act <u>subsection B</u> for a period of 10 years from the effective date of this act March 9, 2018, but shall not preclude the placement of (i) any underground transmission lines in such right-of-way or (ii) any electrical distribution lines in such right-of-way.</p>
925	<p>§ 1. That, to § 32.1-323.4. Department to facilitate transition of persons between certain waiver programs. A. To ensure that persons considering transitioning from the Home and Community-Based Services waiver program to the Medicaid Works program have sufficient information to make an informed choice regarding such transition, the Department of Medical Assistance Services shall establish a process for (i) conducting a comprehensive needs assessment of a person who chooses to participate in the Medicaid Works program to determine the services such person may need to live and fully participate in his community and (ii) developing a plan of support for such person to guide the person in selection of the best waiver program for his needs.</p> <p>§ 2. That the B. The Department of Medical Assistance Services shall establish a process to enable a person who transitions from a Home and Community-Based Services waiver program to the Medicaid Works program to retain his Home and Community-Based Services waiver slot for up to 180 days following the date of such transition.</p> <p>§ 3. That the C. The Department of Medical Assistance Services shall establish a process to give priority to individuals previously receiving services through the Home and Community-Based Services waiver program who transitioned to the Medicaid Works program and who subsequently seek to resume services through the Home and Community-Based Services waiver program.</p>
930	<p><i>Codify as subdivision A 10 of § 32.1-111.4:</i></p> <p>§ 1. That the Board of Health shall develop regulations <u>10. Procedures</u> for when emergency medical services agencies in medically underserved areas as defined by the Board may transport patients to 24-hour urgent care facilities or appropriate medical care facilities other than hospitals. The regulations shall include provisions for what constitutes a medically underserved area, cases appropriate for transferring a patient to a medical facility other than a hospital, and other information deemed relevant by the Board.</p>
938	<p><i>Codify as subsection D of § 63.2-1732:</i></p> <p>1. § 1. That the D. The Board of Social Services shall amend 22VAC40-73-450 governing assisted living facility individualized service plans to require (i) that individualized service plans be reviewed and updated (a) at least once every 12 months or (b) sooner if modifications to the plan are needed due to a significant change, as defined in 22VAC40-73-10, in the resident's condition and (ii) that any deviation from the individualized service plan (a) be documented in writing or electronically, (b) include a description of the circumstances warranting deviation and the date such deviation will occur, (c) certify that notice of such deviation was provided to the resident or his legal</p>

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	representative, (d) be included in the resident's file, and (e) in the case of deviations that are made due to a significant change in the resident's condition, be signed by an authorized representative of the assisted living facility and the resident or his legal representative.
943	<i>Codify by placing at the end of § 54.1-2804.</i> 1. § 1. That the <u>The</u> Board of Funeral Directors and Embalmers shall promulgate regulations that establish the requirements of licensure for funeral directors and embalmers as defined in § 54.1-2800.
975	<i>Codify as subsection B of 46.2-1140.1:</i> That, notwithstanding B. Notwithstanding any other provision of law, the owner or operator of any emergency vehicle as defined in § 46.2-1127.1 of the Code of Virginia , including firefighting equipment, that requires a permit to be operated on the Interstate Highway System because such emergency vehicle exceeds the weight limits set forth in § 46.2-1127.1 of the Code of Virginia shall be exempt from the payment of any fees otherwise charged by the Department of Motor Vehicles for the issuance of such permit if such emergency vehicle is registered to a federal, state, or local agency or a fire company as defined in § 27-6.01 of the Code of Virginia.

Enactment Clauses Assigned Code Section Numbers or Placed in Existing Code Section	
236 and 368 (identical)	<i>Codify by placing at the end of subsection A of § 54.1-2927:</i> § 3. That the <u>The</u> Board of Medicine shall prioritize applicants for licensure as a doctor of medicine or osteopathic medicine, a physician assistant, or a nurse practitioner from such states that are contiguous with the Commonwealth in processing their applications for licensure by endorsement through a streamlined process, with a final determination regarding qualification to be made within 20 days of the receipt of a completed application.
345	<i>Codify a portion of clause 3 by inserting it into subsection B of § 15.2-926.3:</i> B. Notwithstanding the prohibition of subsection A, a political subdivision may, by ordinance or regulation, regulate the take-off and landing of an unmanned aircraft, as defined in § 19.2-60.1, on property owned by the political subdivision. Such ordinance or regulation shall be developed and authorized in accordance with the rules and regulations promulgated by the Department of Aviation (the Department). <u>Such rules and regulations shall be in accordance with federal rules and regulations and shall include a process for adoption of an ordinance or regulation, exemptions to the ordinance or regulation, political subdivision training, and notification requirements.</u> The political subdivision shall report to the Department any ordinance or regulation adopted pursuant to this section, and the Department shall publish and update annually on its website, and any other website the Department deems appropriate, a summary of any such ordinance or regulation adopted.
451 and 452 (identical)	<i>Codify by placing at the end of subsection F of § 28.2-1208:</i> 3. That the <u>The</u> provisions of <u>this</u> subsection F of § 28.2-1208 of the Code of Virginia, as amended by this act, shall not apply to any infrastructure, as defined in subsection F of § 28.2-1208 of the Code of Virginia, as amended by this act, in existence as of the effective date of this act July 1, 2020.
478	<i>Codify as subsection C of § 46.2-1315:</i> 2. That any <u>C. Any</u> person who offers motorized skateboards or scooters, bicycles, or electric power-assisted bicycles for hire in any locality that has not enacted any licensing ordinance, regulation, or other action regulating such business on or after January 1, 2020, and prior to the effective date of this act March 27, 2020, may continue to operate in such locality and shall be subject to any subsequent regulations.
670	<i>Codify as subsection I of § 62.1-266:</i> 2. That the <u>State Water Control-I. The</u> Board shall promulgate regulations establishing criteria for determining whether the quantity or quality of the ground water in a surficial aquifer is adequate to meet a proposed beneficial use. Such regulations shall specify the information required to be submitted to the Department of Environmental Quality (the Department) by a golf course or any other person seeking a determination from the Department that either the quantity or quality of the ground water in a surficial aquifer is not adequate

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	to meet a proposed beneficial use. Such regulations shall require the Department, within 30 days of receipt of a complete request, to make a determination as to the adequacy of the quantity or quality of the ground water in a surficial aquifer.
1197 and 1248 (identical)	5. That there § 58.1-4107.1. Regional Improvement Commission. There is hereby established the Regional Improvement Commission (the Commission). The membership of the Commission shall consist of one member appointed by the local governing body of each jurisdiction composing the transportation district created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq. of the Code of Virginia) that includes the eligible host city described in subdivision A 3 of § 58.1-4107 of the Code of Virginia, as created by this act . Each member shall be appointed to serve a two-year term. Notwithstanding the provisions of subdivision B 1 of § 58.1-4125 of the Code of Virginia, as created by this act , for a casino gaming establishment located in the eligible host city described in subdivision A 3 of § 58.1-4107 of the Code of Virginia, as created by this act , such transfer, otherwise returned to the city where it was collected, shall instead be made to the Commission. The purpose of the Commission shall be to (i) receive disbursements made to it; (ii) establish funding priorities for member localities related to improvements in the areas of education, transportation, and public safety; and (iii) make annual payments divided equally among the jurisdictions to fund the established priorities as determined by the Commission.
1080	<i>Codify enactment clauses 4, 5, and 6 as subsections A, B, and C of new § 38.2-3445.2. Out-of-network claims; reporting requirements:</i> 4. That any A. Any health carrier providing individual or group health insurance coverage shall report to the State Corporation Commission's Bureau of Insurance (the Bureau) no later than September 1, 2020, the number of out-of-network claims for emergency services paid pursuant to subdivision A 4 of § 38.2-3445 of the Code of Virginia, as amended by this act , in fiscal years 2017, 2018, and 2019. Thereafter, any health carrier providing individual or group health insurance coverage shall report to the Bureau, no later than November 1 of each year, the number of out-of-network claims for services described in subsection A of § 38.2-3445.01 of the Code of Virginia, as created by this act , for the previous fiscal year. 5. That any B. Any health carrier providing individual or group health insurance coverage shall report to the State Corporation Commission's Bureau of Insurance no later than September 1 of each year the number and identity of health care providers in the health carrier's network of emergency services providers and surgical or ancillary providers whose participation in the network was terminated by either the health carrier or the health care provider in the previous year and, if applicable, whether participation was subsequently reinstated in the same year. For any terminated health care providers identified by the health carrier in such report, the health carrier shall include (i) a description of the health care provider's or health carrier's stated reason for terminating participation and (ii) a description of the nature and extent of differences in payment levels for emergency services and surgical or ancillary services prior to termination and after reinstatement, if applicable, including a determination of whether such payment levels after reinstatement were higher or lower than those applied prior to termination. 6. That the State Corporation Commission's C. The Bureau of Insurance (the Bureau) shall notify the Chairmen of the House Committee on Labor and Commerce and the Senate Committee on Commerce and Labor of the information reported to the Bureau pursuant to the fourth and fifth enactments of this act subsections A and B and other information specified in this enactment subsection no later than December 1, 2021, and annually thereafter. Such notice shall include (i) the number of out-of-network claims for services described in subsection A of § 38.2-3445.01 of the Code of Virginia, as created by this act , for the previous fiscal year; (iii) the number and identity of health care providers in the health carrier's network of emergency services providers and surgical or ancillary services providers whose participation in the network was terminated by the health carrier or the health care provider in the previous year and whether participation was subsequently reinstated in the same year; (iv) a summary of the stated reasons for terminating participation; (v) a summary of the nature and extent of differences in payment levels prior to termination and after reinstatement, if applicable, including a determination of whether such payment levels after reinstatement were higher or lower than those applied prior to termination; (vi) an assessment by the Bureau of the potential impact of any changes in network participation or payment levels for emergency services on health insurance premiums in the time period to which the report applies; and (vii) the number and type of claims resolved by arbitration and aggregate information on the disposition of those arbitrations, including in which category group's favor the dispute was resolved, and aggregate information on the variation between the initial payment and final settlement amounts.

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<p>1185 and 1186 (identical)</p>	<p>2. That the 62.1-44.119:1 Effective date. The provisions of Chapter 3.8 (§ 62.1-44.119 et seq.) of Title 62.1 of the Code of Virginia, as created by this act, this chapter shall not become effective unless, on or after July 1, 2026, the Secretary of Agriculture and Forestry and the Secretary of Natural Resources jointly determine that the Commonwealth's commitments in the Chesapeake Bay Total Maximum Daily Load Phase III Watershed Implementation Plan have not been satisfied by a combination of agricultural best management conservation practices, including the coverage of a sufficient portion of Chesapeake Bay cropland by nutrient management plans or the installation of a sufficient number of livestock stream exclusion practices.</p>
<p>1187, 1193, & 1194 (identical)</p> <p>and</p> <p>1188 & 1189 (identical)</p> <p>amend section 1 of Acts 2013, cc. 358 and 382, clause 1, as amended by Acts 2017, c. 803.</p>	<p><i>The chapters amend section 1 of Acts 2013, cc 358 and 382, cl. 1, as amended by Acts 2017, c. 803. Codify Acts 2013 c. 358 (which includes the second enactment) as <u>56-594.02. Solar-powered or wind-powered electricity generation; power purchase agreements; pilot programs.</u></i></p> <p>§ 1. That the State Corporation A. The Commission (Commission) shall conduct a pilot program <u>programs</u> under which a person that owns or operates a solar-powered or wind-powered electricity generation facility located on premises owned or leased by an eligible customer-generator, as defined in § 56-594 of the Code of Virginia, shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement used to provide third party financing of the costs of such a renewable generation facility (third party power purchase agreement), subject to the following terms, conditions, and restrictions:</p> <p>a-A 1. Notwithstanding subsection G of § 56-580 of the Code of Virginia or any other provision of law, a pilot program shall be conducted within the certificated service territory of each investor-owned electric utility ("Pilot Utility");</p> <p>b- 2. (Expires July 1, 2022). The aggregated capacity of all generation facilities that are subject to such third party power purchase agreements at any time during the pilot program shall not exceed 500 megawatts for Virginia jurisdictional customers and 500 megawatts for Virginia nonjurisdictional customers for an investor-owned utility that was bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, or 40 megawatts for an investor-owned utility that was not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002. Such limitation on the aggregated capacity of such facilities shall constitute a portion of the existing limit of six percent of each Pilot Utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to subsection E of § 56-594 of the Code of Virginia. Notwithstanding any provision of this act section that incorporates provisions of § 56-594, the seller and the customer shall elect either to (i) enter into their third party power purchase agreement subject to the conditions and provisions of the Pilot Utility's net energy metering program under § 56-594 or (ii) provide that electricity generated from the generation facilities subject to the third party power purchase agreement will not be net metered under § 56-594, provided that an election not to net meter under § 56-594 shall not exempt the third party power purchase agreement and the parties thereto from the requirements of this act section that incorporate provisions of § 56-594;</p> <p>b- 2. (Effective July 1, 2022). The aggregated capacity of all generation facilities that are subject to such third party power purchase agreements at any time during the pilot program shall not exceed 500 megawatts for Virginia jurisdictional customers and 500 megawatts for Virginia nonjurisdictional customers. Such limitation on the aggregated capacity of such facilities shall constitute a portion of the existing limit of six percent of each Pilot Utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to subsection E of § 56-594 of the Code of Virginia. Notwithstanding any provision of this act section that incorporates provisions of § 56-594, the seller and the customer shall elect either to (i) enter into their third party power purchase agreement subject to the conditions and provisions of the Pilot Utility's net energy metering program under § 56-594 or (ii) provide that electricity generated from the generation facilities subject to the third party power purchase agreement will not be net metered under § 56-594, provided that an election not to net meter under § 56-594 shall not exempt the third party power purchase agreement and the parties thereto from the requirements of this act section that incorporate provisions of § 56-594;</p> <p>c- 3. A solar-powered or wind-powered generation facility with a capacity of no less than 50 kilowatts and no more than three megawatts shall be eligible for a third party power purchase agreement under a pilot program; however, if the customer under such agreement is an entity with tax-exempt status in accordance with § 501(c) of the Internal Revenue Code of 1954, as amended, then such facility is eligible for the pilot program even if it does not meet the 50 kilowatts minimum size requirement. The maximum generation capacity of</p>

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three megawatts shall not affect the limits on the capacity of electrical generating capacities of 25 kilowatts for residential customers and three megawatts for nonresidential customers set forth in subsection B of § 56-594 of the Code of Virginia, which limitations shall continue to apply to net energy metering generation facilities regardless of whether they are the subject of a third party power purchase agreement under the pilot program;

~~d. 4.~~ A generation facility that is the subject of a third party power purchase agreement under the pilot program shall serve only one customer, and a third party power purchase agreement shall not serve multiple customers;

~~e. 5.~~ The customer under a third party power purchase agreement under the pilot program shall be subject to the interconnection and other requirements imposed on eligible customer-generators pursuant to subsection C of § 56-594 of the Code of Virginia, including the requirement that the customer bear the reasonable costs, as determined by the Commission, of the items described in clauses (i), (ii), and (iii) of such subsection;

~~f. 6.~~ A third party power purchase agreement under the pilot program shall not be valid unless it conforms in all respects to the requirements of the pilot program conducted under the provisions of this act section and unless the Commission and the Pilot Utility are provided written notice of the parties' intent to enter into a third party power purchase agreement not less than 30 days prior to the agreement's proposed effective date; and

~~g. 7.~~ An affiliate of the Pilot Utility shall be permitted to offer and enter into third party power purchase arrangements on the same basis as may any other person that satisfies the requirements of being a seller under a third party power purchase agreement under the pilot program.

~~§-2. B.~~ The Commission shall review the pilot program established pursuant to § 1 of this act subsection A in 2015 and every two years thereafter during the pilot program. In its review, the Commission shall determine whether the limitations in ~~subdivisions b and c of § 1~~ subdivisions A 2 and 3 should be expanded, reduced, or continued.

~~§-3. C.~~ Any third party power purchase agreement that is not entered into pursuant to the pilot program established pursuant to § 1 of this act subsection A is prohibited in the Pilot Utility's service territory, unless such third party power purchase agreement is entered into between a licensed supplier and a retail customer pursuant to § 56-577 of the Code of Virginia where such supplier is responsible for serving 100 percent of the load requirements for each retail customer account it serves.

~~§-4. D.~~ If the Commission approves a tariff proposed for electric power provided 100 percent from renewable energy that serves 100 percent of the load requirements for each retail customer account it serves under such tariff, hereafter referred to as a "green tariff," such a green tariff shall not be available to any party to a third party power purchase agreement for the account being served by such power purchase agreement, and such an agreement shall remain in effect notwithstanding the approval of the green tariff.

~~§-5. E.~~ Nothing in this act section shall be construed as (i) rendering any person, by virtue of its selling electric power to an eligible customer-generator under a third party power purchase agreement entered into pursuant to the pilot program established under this act section, a public utility or a competitive service provider, (ii) imposing a requirement that such a person meet 100 percent of the load requirements for each retail customer account it serves, or (iii) affecting third party power purchase agreements in effect prior to ~~the effective date of this act July 1, 2013.~~

~~2- F.~~ That nothing in this act section shall abridge any rights of either party to an agreement between a Pilot Utility, ~~as defined in the first enactment of this act,~~ and a group purchasing organization acting on behalf of Virginia local governments regarding the purchase of electric service.

~~3- G. That the State Corporation~~ The Commission shall, by December 1, 2013, establish guidelines concerning (i) information to be provided in notices required under subdivision ~~f of § 1 of the first enactment of this act~~ A 6 and (ii) procedures for aggregating and posting to the Commission's web site information derived from the aforesaid notices, including total capacity utilized by pilot projects for which notice has been received and capacity remaining available for future pilot projects. In addition, the Commission may adopt such rules or establish such guidelines as may be necessary for its general administration of the pilot program established under this act section.

Agenda Item 8 - Public Comment

No meeting materials