

Virginia Code Commission

Meeting Materials - August 3, 2020

Agenda Item 1 - Review and Approve Minutes

VIRGINIA CODE COMMISSION

Tuesday, July 7, 2020 - 10:00 a.m.

Electronic Meeting

DRAFT

Meeting Minutes

Members Present: John S. Edwards; Marcus B. Simon; Jennifer L. McClellan; Don L. Scott, Jr.; Malfourd W. Trumbo; Ward L. Armstrong; Leslie L. Lilley; Charles S. Sharp; Christopher R. Nolen; Samuel T. Towell

Members Absent: Nicole S. Cheuk

Staff Present: Maryann Horch, Senate Technology; David Barry, Scott Meacham, Amigo Wade, Nikki Clemons, Stephanie Kerns, Karen Perrine, Division of Legislative Services (DLS)

Others Present: Michael Skiffington, Director of Policy and Planning, Department of Mines, Minerals and Energy

Call to order: Senator Edwards, chair, called the meeting to order at 10:13 a.m. Pursuant to Item 4-0.01 of Chapter 1289 of the 2020 Acts of Assembly and due to the COVID-19 pandemic state of emergency, the meeting was held electronically over Zoom. Senator Edwards explained the procedures for voting for the meeting.

Senator Edwards welcomed Senator Jennifer L. McClellan and former Delegate Ward Armstrong as new members of the Commission.

Approval of minutes: The minutes of the June 16, 2020, meeting of the Commission, as printed and distributed to the members, were approved without objection.

Recodification of Title 45.1, Mines and Mining: Scott Meacham shared that the recodification workgroup was nearly done reviewing chapters for Title 45.1 and would be able to give a final report to the Commission this interim. Mr. Meacham began with reviewing questions from the last Commission meeting regarding boiler plate language used in the Code of Virginia to address the existence of nonreverting funds. Mr. Meacham stated that because the nonreverting fund in Chapter 10 of Title 45.1 currently exists and has already been used for several years by the Department of Mines, Minerals and Energy, the suggested amendment for recodification merely formalizes and recognizes the existing fund. Mr. Meacham found 130 different sections in the Code that contain similar boiler plate language for existing funds and said the amendment was one regularly made during recodification. Mr. Meacham indicated the change was nonsubstantive and editorial. Judge Lilley, who raised a question regarding the change at the last meeting, stated that he appreciated Mr. Meacham's thorough and informative explanation. Further, he was convinced the change was editorial. The Commission agreed with the proposed change regarding the nonreverting fund.

Chapters 1 through 4 of Title 45.1 - Mr. Meacham stated that Chapters 1 through 4 of Title 45.1 contain two interstate compacts, the Interstate Mining Compact and the Interstate Compact to Conserve Oil and Gas. Both compacts had been adopted by the General Assembly, and the changes suggested are nonsubstantive. Examples are changes in spelling, capitalization, and the phrasing or use of short titles or names.

Chapter 11 of Title 45.1 - Mr. Meacham discussed a number of nonsubstantive changes for Chapter 11, as shown in the meeting materials for Chapter 11, including changing the phrase "against caution"

to "against caution or warning sign or barricade" on line 261 of page 10; clarifying language regarding the use of the term "where last employed" on line 326 on page 12; striking the word "site" on line 328 on page 12; and changing the phrase "shall make or cause to be made a map of the mine" to address situations in which a mine owner needs to submit a map of the owner's mine to the Department of Mines, Minerals and Energy. When discussing use of the word "site" on lines 326 through 328 on page 12, Ms. Davis made a motion to strike the word "site" on line 328. Mr. Towell seconded the motion, and the motion passed unanimously.

Chapter 13 of Title 45.1 - Mr. Meacham said this chapter is a combination of existing Chapter 18.1 regarding retaining dams and existing Chapter 14.7:1 regarding the rights of owners of land adjacent to mineral mines. All changes made to this chapter are straightforward and technical in nature.

At the next Commission meeting, Mr. Meacham will propose " Mines, Minerals, and Energy" as the new name for the title to reflect the contents resulting from recodification. This name also relates to the current name of the department, which is the Department of Mines, Minerals and Energy. Mr. Meacham stated that the only potential source of controversy is that the department's name does not have a comma after "Minerals" but the proposal for the title is to use a comma after "Minerals." The reason is that the Code of Virginia uses the serial comma.

Work plan for 2020 review and approval: Karen Perrine presented the proposed work plan for 2020. The first item on the work plan was the recodification of Title 45.1, which was currently being addressed by the Commission. Ms. Perrine stated the Commission previously approved Title 32.1, Health, for recodification with the idea that the recodification would begin sometime during the current interim and conclude in time for the 2022 legislative session. Ms. Perrine said that staff anticipates that the Title 32.1 recodification could still be done before the 2022 legislative session, but the Commission would not begin working on the title in 2020 as staff attorneys would be unavailable due to special session and additional work related to COVID-19. Previously, the Commission decided that Title 24.2, Elections, would be recodified beginning in 2022, based on a request from the General Registrars and the Department of Elections.

Ms. Perrine said that the restructuring of § 54.1-3408 was started in 2019, and would continue into 2020. DLS is working with the Board of Pharmacy and the assembled workgroups. The changes would be nonsubstantive and focus on restructuring the section.

The remaining items on the work plan were reviewed briefly.

Delegate Scott moved to approve the 2020 work plan. Mr. Nolen seconded, and the motion passed unanimously.

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 11:06 a.m.

Next meeting: Next meeting is August 3, 2020, at 1:30 p.m. by electronic means.

Agenda Item 2 - "Not Set Out" Section in Title 5.1

Virginia Code Commission Recommendations for Codified Sections Currently Shown as "Not Set Out" in Title 5.1

Title 5.1.

Aviation.

CHAPTER 10.

Metropolitan Washington Airports Authority

§ 5.1-178. Effective Date.

This act shall only become effective upon the enactment into law by the Congress of the United States of legislation that authorizes and directs the sale, lease, or other disposition of the Metropolitan Washington Airports to the Authority; provided, however, the Governor may make appointments for initial Authority membership at such time or times following the passage of this act as he may deem appropriate. (2001, c. 342)

RECOMMENDATION: Repeal this section by way of a bill. The provisions of this bill have been accomplished pursuant to 49 U.S.C. § 49101 et seq. Therefore, this section is no longer needed because the act has been made effective and the initial Authority members were appointed many years ago.

Agenda Item 3 - Recodification of Title 45.1 - Chapter 11 Follow-up

802 ~~which that~~ is inspected by ~~the Mine Safety and Health Administration~~ MSHA, the working of
803 such mine shall not resume until a mine inspector has inspected the mine and approved it.

804 C. ~~Emergency actions~~ An emergency action necessary to preserve a mine may be
805 undertaken without the prior notice of intent and advance inspection required by subsection B.
806 In such event, a mine foreman shall examine ~~a~~ the mine for hazardous conditions immediately
807 before ~~miners are~~ any miner is permitted to work. The licensed operator, or his agent, shall
808 notify the Department as soon as possible after commencing an emergency action necessary
809 to preserve the mine.

810 D. The licensed operator, or his agent, shall send to the Department ~~ten~~ 10 days' prior
811 notice of any change in the name of a mine or in the name of the operation of a mine.

812 E. The licensed operator, or his agent, shall send to the Department ~~ten~~ 10 days' prior
813 notice of the opening of a new mine.

814 F. Any notice required by this section shall be in writing and shall include the name
815 and location of the mine, ~~the location of the mine, and~~ the name, mailing address, and email
816 address of the licensed operator, ~~and the licensed operator's mailing address.~~

817 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
818 **227, which states that throughout the Code any word used in the singular includes the**
819 **plural and vice versa. The name of the Mine Safety and Health Administration is**
820 **shortened to correspond to the definition of that term as added to proposed § 45.2-xxx [§**
821 **45.1-161.292:2]. Language is updated for modern usage and clarity.**

822 § ~~45.1-161.292:37~~ 45.2-xxx. Maps of mines required to be made; contents; extension
823 and preservation; use by Department; release; posting of map.

824 A. Prior to commencing mining activity, the licensed operator of a mineral mine, or
825 his agent, shall ~~make, or cause to be made~~ submit, unless already ~~made and filed~~ submitted,
826 an accurate map of such mine, ~~on a~~. The scale ~~to of such map shall~~ be stated thereon ~~of and~~
827 shall be between 100 ~~to~~ feet and 400 feet to the inch. Such map shall show the openings or
828 excavations, ~~the~~ shafts, slopes, entries ~~and airways, with darts or arrows showing direction of~~
829 air currents, headings, rooms, pillars, permanent explosive magazines, permanent fuel storage

830 facilities, and airways with darts or arrows showing direction of air currents. Such map shall
831 also show such portions of such mine ~~or mines as may that~~ have been abandoned, ~~and so~~
832 ~~much any portion~~ of the property lines and the outcrop of the mineral of the tract of land on
833 which the mine is located, ~~as may be are located~~ within 1,000 feet of any part of the workings
834 of such mine, ~~and for.~~ For an underground ~~mines mine~~ only, such map shall show the general
835 inclination of the mineral strata.

836 B. The licensed operator of such mine shall annually, beginning on the anniversary
837 date of the mine permit issued pursuant to Chapter 16 (§ ~~45.1-180 45.2-xxx~~ et seq.), and
838 continuing while the mine is in operation, cause ~~the such~~ map ~~thereof~~ to be extended so as to
839 accurately show the progress of the workings, and the property lines and outcrop as described
840 above in subsection A, and shall forward ~~the same such updated map~~ to the Department to be
841 kept on record, subject to the conditions stated in subsection ~~C D~~. If there are no changes in
842 the information required by this section, ~~an updated map the licensed operator~~ shall not be
843 required to ~~be submitted~~ submit an updated map to the Department.

844 ~~B. The licensed operator of any surface mineral mine, or his agent, shall not be~~
845 ~~required to submit a map of such mine to the Department unless the mine may intersect (i)~~
846 ~~underground workings or (ii) workings from auger, thin seam, or highwall mining operations.~~
847 The C. Each map required pursuant to this section shall be filed and preserved among the
848 records of the Department ~~and made. The Department shall make such map~~ available at a
849 reasonable cost to ~~all persons~~ any person owning, leasing, or residing on or having an
850 equitable interest in any surface ~~areas area~~ or coal or mineral ~~interests interest~~ within 1,000
851 feet of such mining operation upon written proof satisfactory to the Director and upon a sworn
852 affidavit that such person requesting a map has ~~a proper~~ the required legal or equitable
853 interest; ~~however. However,~~ the Director shall provide to ~~the such~~ person ~~requesting a map~~
854 only that portion of the map ~~which that~~ abuts or is contiguous to the property in which such
855 requesting party has a legal or equitable interest. In no case shall any copy of ~~the same such~~
856 map be made for any ~~other~~ person who does not possess the required legal or equitable

857 interest without the consent of the licensed operator or his agent. The Director shall promptly
858 deliver notice of such request to the licensed operator of such mining operation.

859 ~~C. D.~~ The original version of a map required by this section, or a true copy thereof,
860 shall be kept by ~~such the~~ licensed operator at the active mine, open at all reasonable times for
861 the examination and use of the mine inspector.

862 ~~D. E.~~ Copies of such maps shall be made available at a reasonable cost to the
863 governing body of any ~~county, city or town~~ locality in which the mine is located upon written
864 request; however, such copies shall be provided on the condition that they not be released to
865 any person who does not have a legal or equitable interest in any surface ~~areas~~ area or mineral
866 ~~interests~~ interest within 1,000 feet of the mining operation without the written consent of the
867 licensed operator or his agent. The governing body shall promptly deliver notice of any
868 request for a copy of such a map to the licensed operator or his agent.

869 **Drafting note: Technical changes are made, including organizational changes**
870 **that divide subsection A into two subsections and divide the first two sentences in**
871 **subsection A into five sentences. The first sentence of existing subsection B, which**
872 **exempts certain maps from the filing requirement, is deleted to reflect the current**
873 **requirement by the Department that maps of every mine be filed. Technical changes are**
874 **made pursuant to § 1-227, which states that throughout the Code any word used in the**
875 **singular includes the plural and vice versa. Language is updated for modern usage and**
876 **clarity.**

877 § ~~45.1-161.292:38~~ 45.2-xxx. When the Director may cause maps to be made; payment
878 of expense.

879 ~~A. If the a~~ licensed mine operator, or his agent, ~~of any mine shall neglect~~ neglects or
880 fail fails to furnish to the Director a copy of any map or extension thereof, as provided in §
881 ~~45.1-161.292:37~~ 45.2-xxx, the Director is authorized to cause a correct survey and map of
882 said such mine, or extension ~~thereof~~, to be made at the expense of the licensed operator of
883 such mine, ~~the cost.~~ The expense of ~~which~~ making such survey and map or extension thereof

Agenda Item 3 con't - Chapter 16, Virginia Gas and Oil Act

1 SUBTITLE IV.

2 GAS AND OIL.

3 **Drafting note: Proposed Subtitle IV is created to logically organize provisions**
4 **relating to gas and oil and is divided into proposed Chapters 16 (the Virginia Gas and Oil**
5 **Act) and 17 (Offshore Energy Resources).**

6 CHAPTER ~~22.1~~ 16.

7 ~~THE~~ VIRGINIA GAS AND OIL ACT.

8 **Drafting note: Existing Chapter 22.1, designated as the Virginia Gas and Oil Act, is**
9 **retained as proposed Chapter 16. This chapter is divided into five articles, comprising the**
10 **four articles that currently exist in Chapter 22.1 and an additional article containing**
11 **existing § 62.1-195.1.**

12 Article 1.

13 General Provisions.

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

15 § ~~45.1-361.1~~ 45.2-xxx. Definitions.

16 As used in this chapter, unless the context ~~clearly indicates otherwise~~ requires a different
17 meaning:

18 "Abandonment of a well" or "cessation of well operations" means the time at which (i) a
19 gas or oil operator has ceased operation of a well and has not properly plugged the well and
20 reclaimed the site as required by this chapter, (ii) ~~the time at which~~ a gas or oil operator has
21 allowed the well to become incapable of production or conversion to another well type, or (iii)
22 ~~the time at which~~ the Director revokes a permit or forfeits a bond covering a gas or oil
23 operation.

24 "Associated ~~facilities~~ facility" means any facility utilized for gas or oil operations in the
25 Commonwealth, other than a well or a well site.

26 "Barrel" means ~~forty two~~ 42 U.S. gallons of liquids, including slurries, at a temperature
27 of ~~sixty~~ 60 degrees Fahrenheit.

28 "Board" means the Virginia Gas and Oil Board.

29 "Coalbed methane gas" means occluded natural gas produced from coalbeds and rock
30 strata associated therewith.

31 "Coalbed methane gas well" means a well capable of producing coalbed methane gas.

32 "Coalbed methane gas well operator" means any person who operates or has been
33 designated to operate ~~or does operate~~ a coalbed methane gas well.

34 "Coal claimant" means a person identified as possessing an interest in production
35 royalties when a drilling unit is force-pooled or who asserts or possesses a claim to funds that
36 are held in escrow, for a force-pooled coalbed methane gas well, or in suspense, for a
37 voluntarily pooled coalbed methane gas well, by virtue of owning an interest in the coal estate
38 contained within the drilling unit subject to the pooling order or agreement.

39 "Coal operator" means any person who operates or has the right to operate ~~or does~~
40 ~~operate~~ a coal mine.

41 "Coal owner" means any person who owns, leases, mines and produces, or has the right
42 to mine and produce, a coal seam.

43 "Coal seam" means any stratum of coal ~~twenty~~ 20 inches or more in thickness, ~~unless~~
44 "Coal seam" includes a stratum of less than 20 inches in thickness if it (i) is being commercially
45 worked, ~~or can~~ (ii) in the judgment of the Department could foreseeably be commercially
46 worked and will require protection if ~~wells are~~ a well is drilled through it.

47 "Correlative ~~rights~~ right" means the right of each gas or oil owner having an interest in a
48 single pool to have a fair and reasonable opportunity to obtain and produce his just and
49 equitable share of production of the gas or oil in such pool or its equivalent without being
50 required to drill unnecessary wells or incur other unnecessary expenses to recover or receive the
51 gas or oil or its equivalent.

52 "Cubic foot of gas" means the volume of gas contained in one cubic foot of space at a
53 standard pressure base of 14.73 pounds per square foot and a standard temperature base of ~~sixty~~
54 60 degrees Fahrenheit.

55 "Disposal well" means any well drilled or converted for the disposal of drilling fluids,
56 produced waters, or other wastes associated with gas or oil operations.

57 "Drilling unit" means the acreage on which one gas or oil well may be drilled.

58 "Enhanced recovery" means (i) any activity involving injection of any air, gas, water, or
59 other fluid into the productive strata; (ii) the application of pressure, heat, or other means for
60 the reduction of viscosity of the hydrocarbons; or (iii) the supplying of additional motive force
61 other than normal pumping to increase the production of gas or oil from any well, wells, or pool.

62 "Evidence of a proceeding or agreement" means written evidence that ~~(i)~~ the coal
63 claimant has (i) filed and has pending a judicial or arbitration proceeding against the gas
64 claimant to determine the ownership of the coalbed methane gas and the right to the funds held
65 in escrow or suspense or (ii) ~~the coal claimant and~~ reached an agreement with the gas claimant
66 ~~have reached an agreement~~ to apportion the funds between them.

67 "Exploratory well" means any well drilled to (i) ~~to~~ find and produce gas or oil in an
68 unproven area, (ii) ~~to~~ find a new reservoir in a field previously found to be productive of gas or
69 oil in another reservoir, or (iii) ~~to~~ extend the limits of a known gas or oil reservoir.

70 "Field rules" means rules established by order of the ~~Virginia Gas and Oil~~ Board that
71 define a pool, drilling units, production allowables, or other requirements for gas or oil
72 operations within an identifiable area.

73 "First point of sale" means, for oil, the point at which the oil is (i) sold, exchanged, or
74 transferred for value from one person to another person, or (ii) when used by the original owner
75 of the oil ~~uses the oil, the point at which the oil is~~, transported off the permitted site and
76 delivered to another facility for use by the original owner; ~~and~~, "First point of sale" means, for
77 gas, the point at which the gas is (a) sold, exchanged, or transferred for value to any interstate or
78 intrastate pipeline, any local distribution company, or any person for use by such person, or (b)
79 when ~~the gas is~~ used by the owner of the gas for a purpose other than the production or
80 transportation of the gas, ~~the point at which the gas is~~ delivered to a facility for use.

81 ~~"Fund" means the Gas and Oil Plugging and Restoration Fund.~~

82 "Gas" or "natural gas" means all natural gas, whether hydrocarbon ~~or~~ nonhydrocarbon,
83 or any combination or mixture thereof, including hydrocarbons, hydrogen sulfide, helium,
84 carbon dioxide, nitrogen, hydrogen, casing head gas, and all other fluids not defined as oil
85 pursuant to this section.

86 "Gas claimant" means a person who is identified as possessing an interest in production
87 royalties when a drilling unit is forced-pooled or who asserts or possesses a claim to funds that
88 are held in escrow, for a force-pooled coalbed methane gas well, or in suspense, for a
89 voluntarily pooled coalbed methane gas well, by virtue of owning an interest in the gas estate
90 contained within the drilling unit subject to the pooling order or agreement.

91 "Gas or oil operations" means any (i) activity relating to drilling, redrilling, deepening,
92 stimulating, production, enhanced recovery, converting from one type of a well to another,
93 combining or physically changing to allow the migration of fluid from one formation to another,
94 or plugging or replugging any well; ~~ground-disturbing~~ (ii) ground-disturbing activity relating to
95 the development, construction, operation ~~and~~, or abandonment of a gathering pipeline; ~~the~~ (iii)
96 development, operation, maintenance, ~~and~~ or restoration of any site involved with gas or oil
97 operations; or ~~any~~ (iv) work undertaken at a facility used for gas or oil operations. ~~The term~~
98 "Gas or oil operations" embraces all of the land or property that is used for or ~~which~~ that
99 contributes directly or indirectly to a gas or oil operation, including all roads.

100 "Gas or oil operator" means any person who operates or has been designated to operate
101 ~~or does operate~~ any gas or oil well or gathering pipeline.

102 "Gas or oil owner" means any person who owns, leases, has an interest in, or ~~who~~ has
103 the right to explore for, drill, or operate a gas or oil well as principal or ~~as~~ lessee. ~~In the event~~
104 ~~that~~ If the gas is owned separately from the oil, ~~the definitions contained herein~~ this definition
105 shall apply separately to the gas owner or oil owner.

106 "Gas title conflicts" means conflicting ownership claims between gas claimants; ~~the~~
107 ~~term~~. "Gas title conflicts" does not include conflicting ownership claims between a gas
108 ~~claimants~~ claimant and a coal ~~claimants~~ claimant.

109 "Gathering pipeline" means ~~(i)~~ a pipeline ~~which~~ that is used or intended for use in the
110 transportation of gas or oil from the well to (i) a transmission pipeline regulated by the ~~United~~
111 ~~States~~ U.S. Department of Transportation or the State Corporation Commission or (ii) ~~a pipeline~~
112 ~~which is used or intended for use in the transportation of gas or oil from the well to~~ an ~~off site~~
113 offsite storage, marketing, or other facility where the gas or oil is sold.

114 "Geophysical operator" means a person who has the right to explore for gas or oil using
115 ~~ground-disturbing~~ ground-disturbing geophysical exploration.

116 "Gob" means the de-stressed zone associated with any full-seam extraction of coal that
117 extends above and below the mined-out coal seam.

118 ~~"Ground-disturbing"~~ "Ground-disturbing" means any changing of land ~~which may~~ that
119 could result in soil erosion from water or wind and the movement of sediments into state waters,
120 including, ~~but not limited to~~, clearing, grading, excavating, drilling, and transporting and filling
121 of land.

122 ~~"Ground-disturbing"~~ "Ground-disturbing geophysical exploration" or "geophysical
123 operation" means any activity in search of gas or oil that breaks or disturbs the surface of the
124 earth, including ~~but not limited to~~ road construction or core drilling. The term ~~shall~~ does not
125 include the conduct of (i) a gravity, magnetic, radiometric ~~and, or~~ similar geophysical ~~surveys,~~
126 ~~and~~ survey or (ii) a vibroseis or ~~other~~ similar seismic ~~surveys~~ survey.

127 "Injection well" means any well used to inject or otherwise place any substance
128 associated with gas or oil operations into the earth or underground strata for disposal, storage, or
129 enhanced recovery.

130 "Inspector" means the Virginia Gas and Oil Inspector, appointed by the Director
131 pursuant to § ~~45.1-361.4, 45.2-xxx~~ or such other public officer, employee, or other authority ~~as~~
132 may who in ~~emergencies be acting in the stead~~ an emergency acts instead of, or by law ~~be is~~
133 assigned the duties of, the Virginia Gas and Oil Inspector.

134 "Log" means the written record progressively describing all strata, water, oil, or gas
135 encountered in drilling, depth and thickness of each bed or seam of coal drilled through,

136 quantity of oil, volume of gas, pressures, rate of fill-up, ~~fresh~~ freshwater-bearing and ~~salt water-~~
137 ~~bearing~~ saltwater-bearing horizons and depths, cavings strata, casing records, and ~~such~~ other
138 information ~~as is~~ usually recorded in the normal procedure of drilling. ~~The term shall also~~
139 ~~include~~ "Log" includes electrical survey records or electrical survey logs.

140 "Mine" means an underground or surface excavation or development with or without
141 shafts, slopes, drifts, or tunnels for the extraction of coal, minerals, or nonmetallic materials,
142 commonly designated as mineral resources, and the hoisting or haulage equipment or
143 appliances, if any, for the extraction of the mineral resources. ~~The term embraces~~ "Mine"
144 includes all of the land or property of the mining plant, including both the surface and
145 subsurface, that is used in or contributes directly or indirectly to the mining, concentration, or
146 handling of the mineral resources, including all roads.

147 "Mineral" ~~shall have~~ means the same ~~meaning as ascribed to it~~ as that term is used in §
148 ~~45.1-180~~ 45.2-xxx.

149 "Mineral operator" means any person who operates or has the right to ~~or does~~ operate a
150 mineral mine.

151 "Mineral owner" means any person who owns minerals, leases minerals, mines and
152 produces minerals, or ~~who~~ has the right to mine and produce minerals and to appropriate such
153 minerals that he produces ~~therefrom~~ from it, either for himself or for himself and others.

154 "Nonparticipating operator" means a gas or oil owner of a tract that is included in a
155 drilling unit who elects to share in the operation of the well on a carried basis by agreeing to
156 have his proportionate share of the costs allocable to his interest charged against his share of
157 production from the well.

158 "Offsite disturbance" means any soil erosion, water pollution, or escape of gas, oil, or
159 waste from gas, oil, or geophysical operations off a permitted site ~~which~~ that results from
160 activity conducted on a permitted site.

161 "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of
162 gravity, ~~which~~ that are produced at the well in liquid form by ordinary production methods and
163 ~~which~~ are not the result of condensation of gas after it leaves the underground reservoir.

164 "Orphaned well" means any well abandoned prior to July 1, 1950, or for which no
165 records exist concerning its drilling, plugging, or abandonment.

166 "Participating operator" means a gas or oil owner who elects to (i) bear a share of the
167 risks and costs of drilling, completing, equipping, operating, plugging, and abandoning a well
168 on a drilling unit and ~~to~~ (ii) receive a share of production from the well equal to the proportion
169 ~~which~~ that the acreage in the drilling unit he owns or holds under lease bears to the total acreage
170 of the drilling unit.

171 "Permittee" means any gas, oil, or geophysical operator holding a permit for gas, oil, or
172 geophysical operations issued under authority of this chapter.

173 "Person under a disability" ~~shall have~~ means the same ~~meaning as ascribed to it as that~~
174 term is defined in § 8.01-2.

175 "Pipeline" means any pipe above or below the ground used or to be used to transport gas
176 or oil.

177 "Plat" or "map" means a map, drawing, or print showing the location of a well ~~or wells~~,
178 mine, quarry, or other information required under this chapter.

179 "Pool" means an underground accumulation of gas or oil in a single and separate natural
180 reservoir. It is characterized by a single natural pressure system so that production of gas or oil
181 from one part of the pool tends to or does affect the reservoir pressure throughout its extent. A
182 pool is bounded by geologic barriers in all directions, such as geologic structural conditions,
183 impermeable strata, or water in the formation, so that it is effectively separated from any other
184 pool ~~which~~ that may be present in the same geologic structure. A "coalbed methane pool" means
185 an area ~~which~~ that is underlain or appears to be underlain by at least one coalbed capable of
186 producing coalbed methane gas.

187 "Project area" means the well, and any gathering pipeline, associated ~~facilities~~ facility,
188 ~~roads~~ road, and any other disturbed area, all of which are permitted as part of a gas, oil, or
189 geophysical operation.

190 "Restoration" means all activity required to return a permitted site to other use after gas,
191 oil, or geophysical operations have ended, as approved in the operations plan for the permitted
192 site.

193 "Royalty owner" means any owner of gas or oil in place, or owner of gas or oil rights,
194 who is eligible to receive payment based on the production of gas or oil.

195 "State waters" means all water, on the surface and under the ground, that is wholly or
196 partially within or bordering the Commonwealth or within its jurisdiction and ~~which affect~~ that
197 affects the public welfare.

198 ~~"Stimulate"~~ "Stimulation" means any action taken by a gas or oil operator to increase the
199 inherent productivity of a gas or oil well, including, ~~but not limited to~~, fracturing, shooting, or
200 acidizing, but excluding (i) cleaning out, bailing, or workover operations and (ii) the use of
201 surface-tension reducing agents, emulsion breakers, paraffin solvents, ~~and or~~ other agents ~~which~~
202 that affect the gas or oil being produced, as distinguished from the producing formation.

203 "Storage well" means any well used for the underground storage of gas.

204 "Surface owner" means any person who is the owner of record of the surface of the land.

205 "Waste" or "escape of resources" means (i) physical waste, as that term is generally
206 understood in the gas and oil industry; (ii) the inefficient, excessive, improper use, or
207 unnecessary dissipation of reservoir energy; (iii) the inefficient storing of gas or oil; (iv) the
208 locating, drilling, equipping, operating, or producing of any gas or oil well in a manner that
209 causes, or tends to cause, a reduction in the quantity of gas or oil ultimately recoverable from a
210 pool under prudent and proper operations, or that causes or tends to cause unnecessary or
211 excessive surface loss or destruction of gas or oil; (v) the production of gas or oil in excess of
212 transportation or marketing facilities; (vi) the amount reasonably required to be produced in the
213 proper drilling, completing, or testing of the well from which it is produced, except gas

214 produced from an oil well or condensate well pending the time when with reasonable diligence
215 the gas can be sold or otherwise usefully utilized on terms and conditions that are just and
216 reasonable; or (vii) underground or ~~above-ground~~ aboveground waste in the production or
217 storage of gas, oil, or condensate, however caused. ~~The term "waste"~~ "Waste" does not include
218 gas vented from a methane drainage ~~boreholes~~ borehole or coalbed methane gas ~~wells,~~ well
219 where necessary for safety reasons or for the efficient testing and operation of a coalbed
220 methane gas ~~wells;~~ well, nor does it include the plugging of a coalbed methane gas ~~wells~~ well
221 for the recovery of the coal estate.

222 "Waste from gas, oil, or geophysical operations" means any substance other than gas or
223 oil ~~which is that~~ (i) is produced or generated during or results from the development, drilling,
224 and completion of ~~wells~~ any well and associated ~~facilities~~ facility or the development and
225 construction of gathering pipelines or (ii) is produced or generated during or results from well,
226 pipeline, and associated ~~facilities'~~ facility operations, including, ~~but not limited to,~~ brines and
227 produced fluids other than gas or oil. ~~In addition, this term shall include~~ "Waste from gas, oil, or
228 geophysical operations" includes all rubbish and debris, including all material generated during
229 or resulting from well plugging, site restoration, or the removal and abandonment of gathering
230 pipelines and associated facilities.

231 "Water well" means any well drilled, bored, or dug into the earth for the sole purpose of
232 extracting ~~therefrom~~ from it potable, fresh, or usable water for household, domestic, industrial,
233 agricultural, or public use.

234 "Well" means any shaft or hole sunk, drilled, bored, or dug into the earth or into
235 underground strata for the extraction, injection, or placement of any gaseous or liquid substance,
236 or any shaft or hole sunk or used in conjunction with such extraction, injection, or placement.
237 ~~The term shall~~ "Well" does not include any shaft or hole sunk, drilled, bored, or dug into the
238 earth for the sole purpose of pumping or extracting ~~therefrom~~ from it potable, fresh, or usable
239 water for household, domestic, industrial, agricultural, or public use and ~~shall~~ does not include
240 any water ~~boreholes~~ borehole, methane drainage ~~boreholes~~ borehole where the methane is

241 vented or flared rather than produced and saved, subsurface ~~boreholes~~ borehole drilled from the
242 mine face of an underground coal mine, any other ~~boreholes~~ borehole necessary or convenient
243 for the extraction of coal or drilled pursuant to a uranium exploratory program carried out
244 pursuant to the laws of ~~this~~ the Commonwealth, or any coal or non-fuel mineral core hole or
245 borehole drilled for the purpose of exploration.

246 **Drafting note: The phrase "but not be limited to" is removed following the term**
247 **"including" on the basis of § 1-218, which states that throughout the Code "'Includes'**
248 **means includes, but not limited to." Technical changes are made, including changes**
249 **pursuant to § 1-227, which states that throughout the Code any word used in the singular**
250 **includes the plural and vice versa. Redundant text is removed and changes are made for**
251 **clarity, including changes that rephrase definitions and divide one sentence into two in the**
252 **definitions of "coal seam" and "gas or oil owner." Some existing clause designations are**
253 **moved and new clause designations are inserted. The definition of "fund" is deleted**
254 **because the chapter contains two funds, neither of which is referenced without a citation.**
255 **The definition of "waste" is relocated to precede the definition of "waste from gas, oil, or**
256 **geophysical operations" to place them in alphabetical order. Language is updated for**
257 **modern usage and clarity.**

258 § ~~45.1-361.2~~ 45.2-xxx. Regulation of coal surface mining not affected by chapter.

259 Nothing in this chapter shall be construed as limiting the powers of the Director relating
260 to coal surface mining operations and reclamation. The provisions of Chapter ~~19 10~~ (§ ~~45.1-226~~
261 45.2-xxx et seq.), including requirements for permits and bonds, shall apply to gas, oil, or
262 geophysical operations located on ~~areas~~ any area for which a coal surface mining permit is in
263 effect and shall be in addition to the requirements for gas, oil, or geophysical operations set
264 forth in this chapter, except that well work and the operation of pipelines on ~~areas~~ an area that
265 ~~have~~ has been reclaimed by the surface mine operator or the Director shall be treated as
266 postmining uses. The Director shall give special consideration to the development and
267 ~~promulgation~~ adoption of variances from the postmining use requirements of Chapter ~~19 10~~ for

268 gas, oil, or geophysical operations; however, all such variances shall be consistent with the
269 provisions of Chapter ~~19~~ 10.

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

272 § ~~45.1-361.3~~ 45.2-xxx. Construction; purposes.

273 The provisions of this chapter shall be liberally construed so as to effectuate the
274 following purposes:

275 1. To foster, encourage, and promote the safe and efficient exploration for and
276 development, production, utilization, and conservation of the Commonwealth's gas and oil
277 resources;

278 2. To provide a method of gas and oil conservation for maximizing exploration,
279 development, production, and utilization of gas and oil resources;

280 3. To recognize and protect the rights of ~~persons~~ any person owning ~~interests~~ an interest
281 in gas or oil resources contained within a pool;

282 4. To ensure the safe recovery of coal and other minerals;

283 5. To maximize the production and recovery of coal without substantially affecting the
284 right of a gas or oil owner proposing to drill a gas or oil well to explore for and produce gas or
285 oil;

286 6. To protect the citizens and the environment of the Commonwealth from the public
287 safety and environmental risks associated with the development and production of gas or oil;
288 and

289 7. To recognize that the use of the surface for gas or oil development shall be only ~~that~~
290 ~~which~~ such use as is reasonably necessary to obtain the gas or oil.

291 **Drafting note: Language is updated for modern usage, "purposes" is added to the**
292 **catchline to more accurately reflect the content of the section, and technical changes are**
293 **made, including changes pursuant to § 1-227, which states that throughout the Code any**
294 **word used in the singular includes the plural and vice versa.**

295 § ~~45.1-361.13~~ 45.2-xxx. Virginia Gas and Oil Board; membership; compensation.

296 A. The Virginia Gas and Oil Board is ~~hereby~~ established as a policy board in the
297 executive branch of state government. The purpose of the Board ~~shall be composed of seven~~
298 ~~members and shall have the powers and duties as specified under~~ is to carry out the provisions
299 of this chapter.

300 B. The ~~Governor~~ Board shall ~~appoint, subject to confirmation by the General Assembly,~~
301 ~~the chairman and six additional~~ have a total membership of seven members that shall consist of
302 six nonlegislative citizen members and one ex officio member. Nonlegislative citizen members
303 of the Board shall be appointed as follows: ~~two for an initial term of two years, two for an initial~~
304 ~~term of four years, and three for an initial term of six years. Thereafter, the members shall be~~
305 ~~appointed for terms of six years. At all times, the Board shall consist of the following qualified~~
306 ~~members: the Director or his designee; one but not more than one individual who is a~~
307 ~~representative of the gas and oil industry; and not the coal industry, one but not more than one~~
308 ~~individual who is a representative of the coal industry; and not the gas and oil industry, and four~~
309 ~~other individuals who are not representatives of the gas, oil, or coal industry, to be appointed by~~
310 the Governor, subject to confirmation by the General Assembly. The Director or his designee
311 shall serve ex officio with voting privileges. A chairman shall be designated by the Governor
312 from among the membership of the Board.

313 C. All vacancies occurring on the Board shall be filled ~~by the Governor, subject to~~
314 ~~confirmation by the General Assembly, for the unexpired term~~ in the same manner as the
315 original appointment within ~~sixty~~ 60 days of the occurrence of the vacancy. ~~As the terms~~ The ex
316 officio member of the Board shall serve terms coincident with such member's term of office,
317 ~~respectively, of the members expire, the Governor shall appoint, subject to confirmation by the~~
318 ~~General Assembly, to fill the vacancies so occasioned, qualified persons whose terms shall be~~
319 ~~for.~~ Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired
320 terms. After the initial staggering of terms, nonlegislative citizen members shall be appointed
321 for a term of six years from the day on which ~~that~~ the term of their immediate predecessor

322 expired. ~~The~~ All members may be reappointed. Nonlegislative citizen members of the Board
323 shall be citizens of the Commonwealth, and the Governor shall seek to appoint persons who
324 reside in localities with significant oil or gas production or storage.

325 ~~C. D.~~ Each member of the Board shall receive compensation ~~and expenses for the~~
326 performance of his duties as provided in ~~accordance with the provisions of~~ § 2.2-2813. All
327 members shall be reimbursed for all reasonable and necessary expenses incurred in the
328 performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of
329 compensation and expenses of the members shall be provided by the Department.

330 **Drafting note: This section is relocated from Article 2. Language is updated to**
331 **reflect current language preferred in the Code for commissions, boards, and councils.**
332 **Technical changes are made.**

333 § ~~45.1-361.4~~ 45.2-xxx. Duties and responsibilities of the Director.

334 A. The Director ~~shall have~~ has the jurisdiction and authority necessary to enforce the
335 provisions of this chapter. The Director ~~shall have~~ has the power and duty to regulate gas, oil, or
336 geophysical operations, collect fees, and perform other responsibilities ~~as may be~~ prescribed in
337 regulations ~~promulgated~~ adopted by the Department or the Board.

338 B. The Director shall appoint the Gas and Oil Inspector.

339 **Drafting note: The term "regulations promulgated" is changed to "regulations**
340 **adopted" in keeping with recent title revisions because "adopt" is more widely used and**
341 **includes the promulgation process. Language is updated for modern usage.**

342 § ~~45.1-361.5~~ 45.2-xxx. Exclusivity of regulation and enforcement.

343 No ~~county, city, town~~ locality or other political subdivision of the Commonwealth shall
344 impose any condition, or require any other local license, permit, fee, or bond that varies from or
345 is in addition to the requirements of this chapter to perform any gas, oil, or geophysical
346 ~~operations which varies from or is in addition to the requirements of this chapter~~ operation.
347 However, no provision of this chapter shall be construed to limit or supersede the jurisdiction
348 ~~and or~~ requirements of any other state ~~agencies~~ agency, local land-use ~~ordinances~~ ordinance,

349 ~~regulations~~ regulation of general purpose, or ~~§§~~ § 58.1-3712, 58.1-3713, 58.1-3713.3, 58.1-
350 3713.4, 58.1-3741, 58.1-3742, ~~and~~ or 58.1-3743.

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

354 ~~§ 45.1-361.6~~ 45.2-xxx. Confidentiality.

355 The Director shall hold confidential all logs, surveys, and reports relating to the drilling,
356 completion, and testing of a well ~~which~~ that are filed by a gas or oil ~~operators~~ operator under
357 this chapter for a period of ~~ninety~~ 90 days after the completion of the well or ~~eighteen~~ 18
358 months after the total depth of the well has been reached, whichever occurs first. Upon receipt
359 of a gas, oil, or geophysical operator's written request, the Director shall hold confidential ~~this~~
360 such information concerning an exploratory well or corehole for a period of two years after
361 completion of the well or four years from the date such well or hole reaches total depth,
362 whichever occurs first. The Director, for good cause shown by the gas, oil, or geophysical
363 operator, may annually extend the period of time for which information regarding exploratory
364 drilling is held confidential. However, the Director shall upon request provide a copy of any
365 survey or log for strata through the lowest coal seam to the coal owner.

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

369 ~~§ 45.1-361.7~~ 45.2-xxx. Expenditure of funds.

370 All funds, except civil ~~charges~~ penalties collected pursuant to ~~§ 45.1-361.8~~ 45.2-xxx,
371 collected by or appropriated to the Department pursuant to the provisions of this chapter shall be
372 expended only for the purpose of carrying out the provisions of this chapter.

373 **Drafting note: The term "civil charges" is updated to the preferred term "civil**
374 **penalties."**

375 ~~§ 45.1-361.8~~ 45.2-xxx. Violations; penalties.

376 A. Any person who violates or refuses, fails, or neglects to comply with any regulation
377 or order of the Board, Director, or Inspector, any condition of a permit, or any provision of this
378 chapter ~~shall be~~ is guilty of a Class 1 misdemeanor.

379 B. In addition, any person who violates any ~~provision of this chapter~~ regulation or order
380 of the Board, Director, or Inspector, any condition of a permit, or any ~~regulation or order of the~~
381 ~~Board, Director, or Inspector~~ provision of this chapter shall, upon such finding by an appropriate
382 circuit court, be assessed a civil penalty of not more than \$10,000 for each day of such violation.
383 All civil penalties under this section shall be recovered in a civil action brought by the Attorney
384 General in the name of the Commonwealth. The court shall direct that all civil penalties
385 assessed under this section be paid into the treasury of the county or city ~~wherein lies~~ where the
386 gas, oil, or geophysical operation determined by the court to be in violation is located.

387 C. The Board, with the consent of the gas, oil, or geophysical operator, may provide, in
388 an order issued by the Board against such operator, for the payment of civil ~~charges~~ penalties for
389 past violations in specific sums not to exceed the limit specified in subsection B ~~of this section~~.
390 Such civil ~~charges~~ penalties shall be instead of any appropriate civil penalty ~~which~~ that could be
391 imposed under this section and shall not be subject to the ~~provision~~ provisions of § 2.2-514.
392 Civil ~~charges~~ penalties collected under this section shall be paid into the treasury of the county
393 or city ~~wherein lies~~ where the gas, oil, or geophysical operation subject to the order issued by
394 the Board is located.

395 **Drafting note: The term "civil charges" is updated to the preferred term "civil**
396 **penalties." Technical changes are made and language is updated for modern usage.**

397 § ~~45.1-361.9~~ 45.2-xxx. Appeals; venue; standing.

398 A. Any order or decision of the Board may be appealed to the appropriate circuit court.
399 Whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage
400 field certificated by the State Corporation Commission is a party in such action, the court shall
401 hear such appeal de novo. The court ~~shall have~~ has the power to enter interlocutory orders as
402 ~~may be~~ necessary to protect the rights of all interested parties pending a final decision.

403 B. Unless the parties otherwise agree, the venue for court review shall be the county or
404 city ~~wherein lies~~ where the gas, oil, or geophysical operation which is the subject of such order
405 or decision is located.

406 C. The Director and all parties required to be given notice of hearings of the Board
407 pursuant to the provisions of § ~~45.1-361.19~~ 45.2-xxx shall have standing to appeal any order or
408 decision of the Board ~~which that~~ directly affects them. The permittee or permit applicant, the
409 Director, and those parties with standing to object, pursuant to the provisions of § ~~45.1-361.30,~~
410 45.2-xxx shall have standing to appeal any order or decision of the Board ~~which that~~ directly
411 affects them; ~~provided, however, with the exception of.~~ However, except for an aggrieved
412 permit applicant or the Director, no person shall have standing to appeal a decision of the Board
413 concerning a permit application unless such person has previously filed an objection with the
414 Director pursuant to the provisions of § ~~45.1-361.35~~ 45.2-xxx. The filing of any petition for
415 appeal concerning the issuance of a new permit ~~which that~~ was objected to pursuant to the
416 provisions of § ~~45.1-361.11, § 45.1-361.12~~ 45.2-xxx or 45.2-xxx or by a gas storage field
417 operator who asserts that the proposed well work will adversely affect the operation of a ~~State~~
418 ~~Corporation Commission-certificated~~ gas storage field certificated by the State Corporation
419 Commission shall automatically stay the permit until such stay is dissolved or the appeal is
420 decided by the circuit court. However, in an appeal by a gas storage field operator, such
421 automatic stay shall not apply to an oil, gas, or coalbed methane ~~wells~~ well completed more than
422 ~~one hundred~~ 100 feet above the cap rock above the storage stratum.

423 **Drafting note: Language is updated for clarity and modern usage. Technical**
424 **changes are made.**

425 § ~~45.1-361.10~~ 45.2-xxx. Duplicate leases.

426 Any person, ~~either~~ as either principal or agent, who executes a lease of land or right
427 therein for drilling for gas or oil, or for the development or production of gas or oil, shall ~~do so~~
428 ~~in duplicate.~~ One furnish a copy of the lease, duly executed by the lessee, ~~shall be furnished~~ to
429 the lessor.

430 **Drafting note: The obsolete requirement that every lease be executed in duplicate is**
431 **stricken. Technical changes are made and language is updated for modern usage.**

432 § ~~45.1-361.11~~ 45.2-xxx. Objections by coal owner.

433 A. In deciding on objections by a coal owner to a proposed permit modification or
434 drilling unit modification, only the following questions shall be considered:

435 1. Whether the work can be done safely with respect to persons engaged in coal mining
436 at or near the well site; and

437 2. Whether the well work is an unreasonable or arbitrary exercise of the well operator's
438 right to explore for, market, and produce oil and gas.

439 B. In deciding on objections by a coal owner to the establishment of a drilling unit, the
440 issuance of a permit for a new well, or the stimulation of a coalbed methane gas well, the
441 following safety aspects shall first be considered, and no order or permit shall be issued where
442 the evidence indicates that the proposed ~~activities~~ activity will be unsafe:

443 1. Whether the drilling unit or drilling location is above or in close proximity to any
444 mine opening or shaft, entry, travelway, airway, haulageway, drainageway, or passageway, or to
445 any proposed extension thereof, in any operated or abandoned or operating coal mine, or in any
446 coal mine already surveyed and platted but not yet being operated;

447 2. Whether the proposed drilling can reasonably be done through an existing or planned
448 pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into
449 consideration the surface topography;

450 3. Whether the proposed well can be drilled safely or the proposed coalbed methane gas
451 well can be stimulated safely, taking into consideration the dangers from creeps, squeezes, or
452 other disturbances due to the extraction of coal; and

453 4. The extent to which the proposed drilling unit or drilling location or stimulation of the
454 coalbed methane gas well unreasonably interferes with the safe recovery of coal, oil, and gas.

455 C. The following questions with respect to the drilling unit or drilling location of a new
456 well or stimulation of a new coalbed methane gas well shall also be considered:

- 457 1. The extent to which the proposed drilling unit or drilling location or coalbed methane
458 gas well stimulation will unreasonably interfere with present or future coal mining operations;
- 459 2. The feasibility of moving the proposed drilling unit or drilling location to a mined-out
460 area, an area below the coal outcrop, ~~or to~~ some other area;
- 461 3. The feasibility of a drilling moratorium for not more than two years in order to permit
462 the completion of coal mining operations;
- 463 4. The method proposed for the recovery of coal and gas;
- 464 5. The practicality of locating the unit or the well on a uniform pattern with other units
465 or wells;
- 466 6. The surface topography and use; and
- 467 7. Whether the decision will substantially affect the right of the gas operator to explore
468 for and produce the gas.

469 The factors in this subsection ~~C of this section~~ are not intended to and shall not be
470 construed to authorize the Director, or the Board under § ~~45.1-361.36~~ 45.2-xxx, to supersede,
471 impair, abridge, or affect any contractual rights or obligations ~~now or hereafter~~ existing between
472 the respective owners of coal and gas or any interest therein.

473 **Drafting note: Language is updated for clarity. Technical changes are made.**

474 § ~~45.1-361.12~~ 45.2-xxx. Distance limitations of certain wells.

475 A. If the well operator and the objecting coal owners who are present or represented at
476 ~~the~~ a hearing to consider the objections to the proposed drilling unit or location are unable to
477 agree upon a drilling unit or location for a new well within 2,500 linear feet of the location of an
478 existing well or a well for which a permit application is on file, then the permit or drilling unit
479 shall be refused.

480 B. The minimum distance ~~limitations~~ limitation established by this section shall not
481 apply if the proposed well will (i) be drilled through an existing or planned pillar of coal
482 required for protection of a preexisting well drilled to any depth, and ~~the proposed well will~~ (ii)

483 neither require enlargement of the pillar nor otherwise have an adverse effect on existing or
484 planned coal mining operations.

485 **Drafting note: Language is updated for clarity. Technical changes are made.**

486 Article 2.

487 Gas and Oil Conservation.

488 **Drafting note: Existing Article 2, relating to gas and oil conservation, is retained.**

489 § ~~45.1-361.14~~ 45.2-xxx. Meetings of the Board; notice; general powers and duties.

490 A. The Board shall schedule a monthly meeting at a time and place designated by the
491 chairman. ~~Should~~ If no petition for action ~~be is~~ filed with the Board prior to ~~such~~ a meeting, the
492 meeting may be ~~cancelled~~ canceled. Notification or cancellation of each meeting shall be given
493 in writing to the ~~other~~ members by the chairman at least five days in advance of the meeting.
494 Four members shall constitute a quorum for the transaction of any business ~~which shall come~~
495 that comes before the Board. All determinations of the Board shall be by majority vote of the
496 quorum present.

497 B. The Board ~~shall have~~ has the power necessary to execute and carry out all of its duties
498 specified in this chapter. The Board is authorized to investigate and inspect ~~such~~ records and
499 facilities as ~~are~~ necessary and proper to perform its duties under this chapter. The Board may
500 employ ~~such~~ personnel and consultants as ~~may be~~ necessary to perform its duties under this
501 chapter.

502 **Drafting note: Language is updated for clarity.**

503 § ~~45.1-361.15~~ 45.2-xxx. Additional duties and responsibilities of the Board.

504 A. In executing its duties under this chapter, the Board shall:

505 1. Foster, encourage₂ and promote the safe and efficient exploration for and
506 development, production₂ and conservation of ~~the~~ gas and oil resources located in the
507 Commonwealth;

508 2. Administer a method of gas and oil conservation for the purpose of maximizing
509 exploration, development, production₂ and utilization of gas and oil resources;

510 3. Administer procedures for the recognition and protection of the rights of gas or oil
511 owners with interests in gas or oil resources contained within a pool;

512 4. Promote the maximum production and recovery of coal without substantially affecting
513 the right of a gas owner proposing a gas well to explore for and produce gas; and

514 5. Hear and decide appeals of Director's decisions and orders issued under Article 3-~~of~~
515 ~~this chapter~~ ([§ 45.2-xxx et seq.](#)).

516 B. Without limiting its general authority, the Board ~~shall have~~ [has](#) the specific authority
517 to issue rules, regulations, or orders pursuant to the provisions of the Administrative Process Act
518 (§ 2.2-4000 et seq.) in order to:

519 1. Prevent waste through the design, spacing, or unitization of wells, pools, or fields.

520 2. Protect correlative rights.

521 3. Enter spacing and pooling orders.

522 4. Establish drilling units.

523 5. Establish maximum allowable production rates for the prevention of waste and ~~for~~ the
524 protection of correlative rights.

525 6. Provide for the maximum recovery of coal.

526 7. Classify pools and wells as gas, oil, gas and oil, or coalbed methane gas.

527 8. Collect data, make investigations and inspections, examine property, leases, papers,
528 books, and records, and require or provide for the keeping of records and the making of reports.

529 9. Set application fees.

530 10. Govern practices and procedures before the Board.

531 11. Require additional data from parties to any hearing.

532 12. Take ~~such~~ actions ~~as are~~ reasonably necessary to carry out the provisions of this
533 chapter.

534 **Drafting note: Technical changes are made and language is updated for modern**
535 **usage.**

536 ~~§ 45.1-361.16~~ [45.2-xxx](#). Applicability and construction.

537 A. The provisions of this article ~~shall~~ apply to all lands in the Commonwealth, whether
538 publicly or privately owned. However, no well commenced prior to July 1, 1990, shall be
539 required to be plugged or abandoned solely for purposes of complying with the conservation
540 provisions ~~contained in~~ of this article.

541 B. No provision ~~contained in~~ of this article shall be construed to grant to the Board the
542 authority or power to fix prices of gas or oil.

543 **Drafting note: Language is updated for modern usage.**

544 § ~~45.1-361.17~~ 45.2-xxx. Statewide spacing of wells.

545 A. Unless prior approval has been received from the Board or a provision of the field or
546 pool rules so allows:

547 1. ~~Wells~~ No well drilled in search of oil shall ~~not~~ be located closer than 1,250 feet to any
548 well completed in the same pool; however, this spacing requirement is subject to § ~~45.1-361.12~~
549 45.2-xxx;

550 2. ~~Wells~~ No well drilled in search of gas shall ~~not~~ be located closer than 2,500 feet to
551 any other well completed in the same pool, or closer than 2,500 feet to any storage well within
552 the boundary of a gas storage field certificated by the State Corporation Commission prior to
553 January 1, 1997, if the well to be drilled is to be completed within the same horizon as the
554 certificated gas storage field; and

555 3. ~~A~~ No well shall ~~not~~ be drilled closer to the boundary of the acreage supporting the
556 well, whether such acreage is a single leasehold or other tract or a contractual or statutory
557 drilling unit, than one-half of the minimum well spacing distances prescribed in this section.

558 B. Unless prior approval has been received from the Board or a provision of the field or
559 pool rules so allows:

560 1. ~~Wells~~ No well drilled in search of coalbed methane gas shall ~~not~~ be located closer
561 than 1,000 feet to any other coalbed methane gas well, or in the case of a coalbed methane gas
562 ~~wells~~ well located in the gob, ~~such wells shall not be located~~ closer than 500 feet to any other
563 coalbed methane gas ~~wells~~ well located in the gob.

564 2. ~~A~~ No coalbed methane gas well shall ~~not~~ be drilled closer than 500 feet, or in the case
565 of ~~such~~ a well located in the gob, ~~not~~ closer than 250 feet, from the boundary of the acreage
566 supporting the well, whether such acreage is a single leasehold or other tract or a contractual or
567 statutory drilling unit.

568 3. The spacing limitations set forth in this subsection are subject to the provisions of §§
569 ~~45.1-361.11~~ 45.2-xxx and ~~45.1-361.12~~ 45.2-xxx.

570 **Drafting note: Language is updated for modern usage and clarity and technical**
571 **changes are made. Well spacing minimums are rephrased as prohibitions for clarity and**
572 **consistency.**

573 § ~~45.1-361.18~~ 45.2-xxx. Voluntary pooling of interests in drilling units; validity of unit
574 agreements.

575 A. When two or more separately owned tracts are embraced within a drilling unit, or
576 when there are separately owned interests in all or a part of any such drilling unit, the gas or oil
577 owners owning such interests may pool their interests for the development and operation of the
578 drilling unit by voluntary agreement. Such ~~agreements~~ agreement may be based on the exercise
579 of pooling rights or rights to establish drilling units ~~which~~ that are granted in any gas or oil
580 lease.

581 B. No voluntary pooling agreement between or among gas or oil owners shall be held to
582 violate the statutory or common law of the Commonwealth ~~which~~ that prohibits monopolies or
583 acts, arrangements, contracts, combinations, or conspiracies in restraint of trade or commerce.

584 **Drafting note: A change is made pursuant to § 1-227, which states that throughout**
585 **the Code any word used in the singular includes the plural and vice versa. Language is**
586 **updated for modern usage.**

587 § ~~45.1-361.19~~ 45.2-xxx. Notice of hearing; standing; form of hearing.

588 A. Any person who applies for a hearing in front of the Board pursuant to the provisions
589 of § ~~45.1-361.20~~ 45.2-xxx, ~~45.1-361.21~~ 45.2-xxx, or ~~45.1-361.22~~ 45.2-xxx shall simultaneously
590 with the filing of such application, provide notice by commercial delivery service, return receipt

591 requested, or certified mail, return receipt requested, to each gas or oil owner, coal owner, or
592 mineral owner having an interest underlying the tract ~~which~~ that is the subject of the hearing,
593 and to the operator of any gas storage field certificated by the State Corporation Commission as
594 a public utility facility whose certificated area includes the tract ~~which~~ that is the subject of the
595 hearing. Whenever a hearing applicant is unable to provide such written notice because the
596 identity or location of a person to whom notice is required to be given is unknown, the hearing
597 applicant shall promptly notify the Board of such inability.

598 B. At least 10 days prior to a hearing, the Board shall publish its agenda in newspapers
599 of general circulation ~~that are widely circulated in the localities~~ each locality where the lands
600 that are the subject of the hearing are located. The agenda shall include the name of each
601 applicant, the ~~localities~~ locality where the lands that are the subject of the hearing are located,
602 the purpose of the hearing, and the date, time, and location ~~thereof~~ of the hearing.

603 C. The Board shall conduct all hearings on ~~applications~~ any application made to it
604 pursuant to the formal litigated issues hearing provisions of the Administrative Process Act (§
605 2.2-4000 et seq.). The applicant and any person to whom notice is required to be given pursuant
606 to ~~the provisions of~~ subsection A ~~of this section~~ shall have standing to be heard at the hearing.
607 The Board shall render its decision on such ~~applications~~ application within ~~thirty~~ 30 days of the
608 hearing's closing date and shall provide notification of its decision to all parties to the hearing
609 pursuant to the provisions of the Administrative Process Act.

610 **Drafting note: Technical changes are made, including changes pursuant to § 1-227,**
611 **which states that throughout the Code any word used in the singular includes the plural**
612 **and vice versa. Language is updated for modern usage and the redundant phrase "that are**
613 **widely circulated" is deleted.**

614 § ~~45.1-361.20~~ 45.2-xxx. Field rules and drilling units for wells; hearings and orders.

615 A. In order to prevent the waste of gas or oil, ~~or~~ or the drilling of unnecessary wells, or to
616 protect correlative rights, the Board on its own motion or upon application of the gas or oil
617 owner shall have the power to establish or modify drilling units. Drilling units, to the extent

618 reasonably possible, shall be of uniform shape and size for an entire pool. Any gas, oil, or
619 royalty owner may apply to the Board for the establishment of field rules and the creation of
620 drilling units for the field. Unless such motion is made or an application is received at least
621 ~~thirty~~ 30 days prior to the next regularly scheduled monthly meeting of the Board, it shall not be
622 heard by the Board at such meeting and shall be heard at the next meeting of the Board
623 thereafter.

624 B. At any hearing of the Board regarding the establishment or modification of drilling
625 units, the Board shall make the following determinations:

626 1. Whether the proposed drilling unit is an unreasonable or arbitrary exercise of a gas or
627 oil owner's right to explore for or produce gas or oil;

628 2. Whether the proposal would unreasonably interfere with the present or future mining
629 of coal or other minerals;

630 3. The acreage to be included in the order;

631 4. The acreage to be embraced within each drilling unit and ~~the~~ its shape ~~thereof~~;

632 5. The area within which wells may be drilled on each unit; and

633 6. The allowable production of each well.

634 C. In establishing or modifying a drilling unit for coalbed methane gas wells, and in
635 order to accommodate the unique characteristics of coalbed methane development, the Board
636 shall require that drilling units conform to the mine development plan, if any, ~~and if~~ If
637 requested by the coal operator, well spacing shall correspond with mine operations, including
638 the drilling of multiple coalbed methane gas wells on each drilling unit.

639 D. If an order to establish or modify a drilling unit will allow a well to be drilled into or
640 through a coal seam, any coal owner within the area to be covered by the drilling unit may
641 object to the establishment of the drilling unit. Upon a coal owner's objection, and without
642 superseding, impairing, abridging, or affecting any contractual rights or obligations existing
643 between coal and gas owners, the Board shall make its determination in accordance with the
644 provisions of §§ ~~45.1-361.11~~ 45.2-xxx and ~~45.1-361.12~~ 45.2-xxx.

645 E. The Board may continue a hearing to its next meeting to allow for further
646 investigation and the gathering and taking of additional data and evidence. If at the time of a
647 hearing there is not sufficient evidence for the Board to determine field boundaries, drilling unit
648 size or shape, or allowable production, the Board may enter a temporary order establishing
649 provisional drilling units, field boundaries, and allowable production for the orderly
650 development of the pool pending receipt of the information necessary to determine the ultimate
651 pool boundaries, spacing of wells for the pool, and allowable production. Upon additional
652 findings of fact, the boundaries of a pool, drilling units for the pool, and allowable production
653 may be modified by the Board.

654 F. Unless otherwise provided for by the Board, after an application for a hearing to
655 establish or modify drilling units or pool boundaries has been filed, no additional ~~wells~~ well
656 shall be permitted in the pool until the Board's order establishing or modifying the pool or units
657 has been entered.

658 G. After the Board issues a field or pool spacing order ~~which~~ that creates drilling units or
659 a pattern of drilling units for a pool, ~~should if~~ a gas or oil owner ~~apply~~ applies for a permit or
660 otherwise ~~indicate~~ indicates his desire to drill a well outside of such drilling units or pattern of
661 drilling units and thereby potentially extend the pool, the Board may, on its own motion or the
662 motion of any interested person, require that the well be located and drilled in compliance with
663 the provisions of the order affecting the pool.

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

667 § ~~45.1-361.21~~ 45.2-xxx. Pooling of interests in drilling units.

668 A. The Board, upon application from any gas or oil owner, shall enter an order pooling
669 all interests in ~~the~~ a drilling unit for the development and operation thereof when:

670 1. Two or more separately owned tracts are embraced in a drilling unit;

671 2. There are separately owned interests in all or part of any such drilling unit and those
672 owners having interests have not agreed to pool their interests; or

673 3. There are separately owned tracts embraced within the minimum statewide spacing
674 requirements prescribed in § ~~45.1-361.17~~ 45.2-xxx.

675 However, no pooling order shall be entered until the notice and hearing requirements of
676 this article have been satisfied.

677 B. Subject to any contrary provision contained in a gas or oil lease respecting the
678 property, gas or oil operations incident to the drilling of a well on any portion of a unit covered
679 by a pooling order shall be deemed to be the conduct of such operations on each tract in the unit.
680 The portion of production allocated to any tract covered by a pooling order shall be in the same
681 proportion as the acreage of that tract bears to the total acreage of the unit.

682 C. ~~All~~ Every pooling ~~orders~~ order entered by the Board pursuant to the provisions of this
683 section shall:

684 1. Authorize the drilling and operation of a well, including the stimulation of all coal
685 seams in the case of a coalbed methane well when authorized pursuant to clause (iii) of
686 subdivision ~~2 b of subsection F 2 b~~ of § ~~45.1-361.29~~ 45.2-xxx, subject to the permit provisions
687 contained in Article 3 (§ ~~45.1-361.27~~ 45.2-xxx et seq.) ~~of this chapter;~~

688 2. Include the time and date when such order expires;

689 3. Designate the gas or oil owner who is authorized to drill and operate the well;
690 ~~provided, however, that except~~ Except in the case of a coalbed methane gas ~~wells~~ well, ~~the~~ such
691 designated ~~operators must have~~ operator shall possess the right to conduct operations or ~~have~~
692 possess the written consent of owners with the right to conduct operations on at least ~~25%~~ 25
693 percent of the acreage included in the unit;

694 4. Prescribe the conditions under which a gas or oil ~~owners~~ owner may become a
695 participating ~~operators~~ operator or exercise ~~their rights~~ a right of election under subdivision 7 ~~of~~
696 ~~this subsection;~~

697 5. Establish the sharing of all reasonable costs, including a reasonable supervision fee,
698 between participating operators so that each participating operator pays the same percentage of
699 such costs as his acreage bears to the total unit acreage;

700 6. Require that any nonleasing gas or oil ~~owners~~ owner be provided with reasonable
701 access to unit records submitted to the Director or Inspector;

702 7. Establish a procedure for a gas or oil owner who received notice of the hearing ~~and~~
703 ~~who~~ but does not decide to become a participating operator ~~may to~~ elect ~~either~~ to (i) sell or lease
704 his gas or oil ownership to a participating operator, (ii) enter into a voluntary agreement to share
705 in the operation of the well at a rate of payment mutually agreed to by the gas or oil owner and
706 the gas or oil operator authorized to drill the well, or (iii) share in the operation of the well as a
707 nonparticipating operator on a carried basis after the proceeds allocable to his share equal the
708 following:

709 a. In the case of a leased tract, 300 percent of the share of such costs allocable to his
710 interest; or

711 b. In the case of an unleased tract, 200 percent of the share of such costs allocable to his
712 interest.

713 D. Any gas or oil owner whose identity and location remain unknown at the conclusion
714 of a hearing concerning the establishment of a pooling order for which public notice was given
715 shall be deemed to have elected to lease his interest to the gas or oil operator at a rate to be
716 established by the Board. The Board shall cause to be established an escrow account into which
717 the unknown lessor's share of proceeds shall be paid and held for his benefit. Such escrowed
718 proceeds shall be deemed to be unclaimed property and shall be disposed of pursuant to the
719 provisions of the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.). Upon
720 discovery of the identity and location of any unknown owner of an interest that is subject to
721 escrow under the provisions of this subsection and is not subject to conflicting claims of
722 ownership, the designated operator shall, within 30 days, file with the Board a petition for
723 disbursement of funds to be considered at the next available hearing. The petition shall include a

724 detailed accounting of all funds deposited in escrow that are subject to the proposed
725 disbursement.

726 E. Any person who does not make an election under the pooling order shall be deemed
727 to have leased his gas or oil interest to the gas or oil well operator as the pooling order may
728 provide.

729 F. ~~Should~~ If a gas or oil owner ~~be is~~ a person under a disability, the applicant for a
730 pooling order may petition the appropriate circuit court to appoint a guardian ad litem pursuant
731 to the provisions of § 8.01-261 for purposes of making the election provided for by this section.

732 G. Any royalty or overriding royalty reserved in any lease ~~which~~ that is deducted from a
733 nonparticipating operator's share of production shall not be subject to charges for operating costs
734 but shall be separately calculated and paid to the royalty owner.

735 H. The Board shall resolve all disputes arising among gas or oil operators regarding the
736 amount and reasonableness of well operation costs. The Board shall, by regulation, establish
737 allowable types of costs ~~which~~ that may be shared in pooled gas or oil operations.

738 **Drafting note: Language is added to the fourth sentence of subsection D to clarify**
739 **that it is an interest rather than an owner that is subject to ownership claims. Changes are**
740 **made pursuant to § 1-227, which states that throughout the Code any word used in the**
741 **singular includes the plural and vice versa. Language is updated for modern usage and**
742 **clarity.**

743 § ~~45.1-361.21:1~~ 45.2-xxx. Coalbed methane gas; ownership.

744 A conveyance, reservation, or exception of coal shall not be deemed to include coalbed
745 methane gas. Nothing in this section shall affect a coal operator's right to vent coalbed methane
746 gas for safety purposes or release coalbed methane gas in connection with mining operations.
747 The provisions of this section shall not affect any settlement of any dispute, or any judgment or
748 governmental order, as to the ownership or development of coalbed methane gas made or
749 entered into prior to ~~the enactment of this provision~~ April 13, 2010.

750 **Drafting note: The date of enactment of the provision in cc. 730, 762 (2010) is**
751 **provided, and language is updated for clarity.**

752 § ~~45.1-361.22~~ 45.2-xxx. Pooling of interests for coalbed methane gas wells; conflicting
753 claims to ownership.

754 ~~When-If~~ there are conflicting claims to the ownership of coalbed methane gas, the
755 Board, upon application from any claimant, shall enter an order pooling all interests or estates in
756 the coalbed methane ~~gas drilling~~ gas-drilling unit for the development and operation thereof. In
757 addition to the provisions of § ~~45.1-361.21~~ 45.2-xxx, the following provisions shall apply:

758 1. Simultaneously with the filing of such application, the gas or oil owner applying for
759 the order shall provide notice pursuant to the provisions of § ~~45.1-361.19~~ 45.2-xxx to each
760 person identified by the applicant as a potential owner of an interest in the coalbed methane gas
761 underlying the tract ~~which~~ that is the subject of the hearing.

762 2. The Board shall cause to be established an escrow account into which the payment for
763 costs or proceeds attributable to the conflicting interests shall be deposited and held for the
764 interest of the claimants.

765 3. The coalbed methane gas well operator shall deposit into the escrow account any
766 money paid by a person claiming a contested ownership interest as a participating operator's
767 share of costs pursuant to the provisions of § ~~45.1-361.21~~ 45.2-xxx and the order of the Board.

768 4. The coalbed methane gas well operator shall deposit into the escrow account one-
769 eighth of all proceeds attributable to the conflicting interests plus all proceeds in excess of
770 ongoing operational expenses as provided for under § ~~45.1-361.21~~ 45.2-xxx and the order of the
771 Board attributable to a participating or nonparticipating operator.

772 5. The Board shall order payment of principal and accrued interest, less escrow account
773 fees, from the escrow account to conflicting claimants only after (i) a final decision of a court of
774 competent jurisdiction adjudicating the ownership of coalbed methane gas as between them is
775 issued; (ii) a determination is reached by an arbitrator pursuant to § ~~45.1-361.22:1~~ 45.2-xxx; or
776 (iii) an agreement is reached among all claimants owning conflicting estates in the tract in

777 question or any undivided interest therein. Upon receipt of an affidavit from conflicting
778 claimants affirming such decision, determination, or agreement, the designated operator shall,
779 within 30 days, file with the Board a petition for disbursement of funds on behalf of the
780 conflicting claimants. The petition shall include a detailed accounting of all funds deposited in
781 escrow that are subject to the proposed disbursement. The amount to be paid to the conflicting
782 claimants shall be determined based on (a) the percentage of ownership interest of the
783 conflicting claimants as shown in the operator's supplemental filing, made part of the pooling
784 order that established the escrow account; (b) the operator's records of deposits attributable to
785 those tracts for which funds are being requested; and (c) the records of the escrow account for
786 the coalbed methane ~~gas drilling~~ gas-drilling unit. The petition for disbursement shall be placed
787 on the first available Board docket. Funds shall be disbursed within 30 days after the Board
788 decision and receipt by the Department of all documentation required by the Board. The
789 interests of any cotenants that have not been resolved by the agreement or by judicial decision
790 shall remain in the escrow account.

791 6. Any person who does not make an election under the pooling order shall be deemed,
792 subject to a final legal determination of ownership, to have leased his gas or oil interest to the
793 coalbed methane gas well operator as the pooling order may provide.

794 **Drafting note: Language is updated for clarity and technical changes are made.**

795 § ~~45.1-361.22:1~~ 45.2-xxx. Conflicting claims of ownership; arbitration.

796 A. The Board shall enter an order requiring that the matter of disputed ownership be
797 submitted to arbitration; and notify the circuit court in the jurisdiction ~~wherein~~ in which the
798 majority of the subject tract is located; (i) upon written request from all claimants to the
799 ownership of coalbed methane gas related to the subject tract under § ~~45.1-361.22~~ 45.2-xxx; (ii)
800 upon receipt of an affidavit executed by all such claimants affirming that there is no other
801 known surface owner, gas or oil owner, coal owner, mineral owner, or operator of a gas storage
802 field certificated by the State Corporation Commission having an interest underlying the subject
803 tract; (iii) after a hearing noticed pursuant to subsection B of § ~~45.1-361.19~~ 45.2-xxx; and (iv)

804 upon a determination by the Department whether sufficient funds are available to pay the
805 estimated costs of the arbitration pursuant to subsection F. Within 30 days of receipt of the
806 notice from the Board, the circuit court shall appoint an attorney from the list maintained by the
807 Department pursuant to subsection C or, at the discretion of the court, such other attorney
808 meeting the qualifications set forth in subsection C. Prior to his appointment as an arbitrator of a
809 particular dispute, the attorney shall certify to the circuit court that he has not derived more than
810 10 percent of his income during any of the preceding three years from any (a) claimants
811 asserting ownership or rights in the subject tract or ~~any~~ (b) affiliated entities or immediate
812 family members of such claimants. If the attorney cannot provide such certification, he shall
813 notify the circuit court and he will be disqualified from serving as arbitrator for that particular
814 dispute.

815 B. The Department shall send notice to all claimants if it determines that there are
816 insufficient funds to pay the estimated costs of the arbitration pursuant to subsection F. The
817 claimants may, by unanimous agreement, proceed with the arbitration process, notify the Board
818 of such agreement, and bear the costs to the extent of the insufficiency. If the parties do not
819 agree, the arbitration shall be delayed until such funds are available.

820 C. To be qualified as an arbitrator, a candidate shall (i) ~~shall~~ be an attorney licensed in
821 the Commonwealth; (ii) ~~shall~~ have at least 10 years of experience in real estate law, including
822 substantial expertise in mineral title examination; and (iii) ~~shall~~ disclose to the Board whether he
823 has been engaged within the preceding three years by any person in ~~matters~~ a matter subject to
824 the jurisdiction of the Board or the Department under this chapter. The Department shall solicit
825 applications from attorneys meeting the qualifications set forth ~~above~~ in this subsection and
826 maintain a list of attorneys qualifying as arbitrators for use by the circuit courts. At least once
827 annually, the Department shall update its list. To maintain qualification, each attorney whose
828 name appears on the list shall update annually his disclosures as set forth in clause (iii).

829 D. The arbitrator shall determine a time and place for the arbitration hearing and cause
830 written notification of such hearing to be served on each surface owner, gas or oil owner, coal

831 owner, mineral owner, or operator of a gas storage field certificated by the State Corporation
832 Commission having an interest underlying the tract that is the subject of the hearing. Parties
833 shall be served personally or by certified mail, return receipt requested, not less than 14 days
834 before the hearing. Appearance at the hearing waives such party's right to challenge notice. Any
835 party to the arbitration has the right to representation before the arbitrator pursuant to § 8.01-
836 581.05. In accordance with § 8.01-581.06, the arbitrator may issue subpoenas for the attendance
837 of witnesses and for the production of books, records, documents, and other evidence;
838 administer oaths; and, upon application by a party to the arbitration, permit the taking of
839 depositions for use as evidence. The arbitrator shall hear and determine the controversy upon the
840 evidence and consistent with applicable law, notwithstanding the failure of a party to appear at
841 the hearing.

842 E. The arbitrator shall issue his determination as to the ownership in the coalbed
843 methane gas and entitlement to proceeds held in escrow within six months from the order of the
844 Board requiring the matter be submitted to arbitration, unless a longer period is otherwise
845 agreed to by all parties. Such determination shall be in writing and sent to the Board and to each
846 party to whom notice is required to be given under subsection D.

847 F. Upon the issuance of the arbitrator's determination of ownership and subject to the
848 availability of funds, the fees and expenses of the arbitration, but not including fees or costs of
849 counsel engaged by the respective claimants or any other costs of the claimants, shall be paid
850 from the accrued interest on general escrow account funds.

851 G. An arbitrator's determination~~;~~ rendered pursuant to subsection E~~;~~ shall be binding
852 upon the parties and~~;~~ upon request of any party to the arbitration~~;~~ may be entered as the
853 judgment of the circuit court responsible for appointing the arbitrator under subsection A.

854 H. Upon application of any party to the arbitration, a determination rendered pursuant to
855 subsection E may be confirmed, vacated, corrected, or appealed pursuant to the grounds set
856 forth in Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.

857 **Drafting note: Technical changes are made and language is updated for modern**
858 **usage.**

859 § ~~45.1-361.22:2~~ 45.2-xxx. Release of funds held in escrow or suspense because of
860 conflicting claims to coalbed methane gas.

861 A. For a coalbed methane gas well that was force-pooled prior to July 1, 2015, the
862 coalbed methane gas well operator shall, on or before January 1, 2016, apply to the Board for
863 the release of the funds in escrow and give written notice of such application to ~~all~~ every
864 conflicting ~~claimants~~ claimant identified in the pooling orders, or to the ~~successors~~ successor of
865 such ~~claimants~~ claimant where the ~~successors are~~ successor is known to the coalbed methane
866 gas well operator or ~~have~~ has identified ~~themselves~~ himself to the coalbed methane gas well
867 operator or the Board. Such notice shall be in accordance with the applicable provisions of §
868 ~~45.1-361.19~~ 45.2-xxx and, if any unknown ~~persons~~ person or unlocatable conflicting ~~claimants~~
869 ~~are~~ claimant is subject to escrow, such notice shall also be published in a newspaper of general
870 circulation in the county or counties where the drilling unit is located once each week for four
871 successive weeks. The application shall include a detailed accounting in accordance with
872 subdivision 5 of § ~~45.1-361.22~~ 45.2-xxx. The Board shall order payment of the principal and
873 accrued interest, less escrow account fees, held in escrow, along with all future royalties
874 attributable to the drilling unit, to each gas claimant identified in the pooling order unless,
875 within 45 days of the coalbed methane gas well operator's notice of its application, the coal
876 claimant provides the Board and the coalbed methane gas well operator with evidence of a
877 proceeding or agreement. The Board, pursuant to its authority granted by § ~~45.1-361.15~~ 45.2-
878 xxx, may extend the time for filing the application and delay the payment of funds for a gas title
879 ~~conflicts~~ conflict, the existence of an unknown gas ~~claimants~~ claimant, the existence of an
880 unlocatable gas ~~claimants~~ claimant, an unresolved gas heirship ~~issues~~ issue, or any other ~~reasons~~
881 reason beyond the reasonable control of the coalbed methane gas well operator and shall not
882 order payment ~~where~~ if the gas claimant fails to provide the Board with information needed
883 under applicable law or regulation to distribute the funds.

884 B. For a coalbed methane gas well force-pooled on or after July 1, 2015, the Board, in its
885 pooling order, shall direct the coalbed methane gas well operator to pay royalties to the gas
886 claimant unless the coal claimant provides the coalbed methane gas well operator and the Board
887 with evidence of a proceeding or agreement not later than the time and place of the pooling
888 hearing. The coalbed methane gas well operator shall provide written notice of the hearing to
889 ~~the every~~ gas ~~claimants~~ claimant and coal ~~claimants~~ claimant in accordance with § ~~45.1-361.19~~
890 ~~45.2-xxx~~. However, the Board, pursuant to its authority granted by § ~~45.1-361.15~~ ~~45.2-xxx~~,
891 shall not order the coalbed methane gas well operator to make payment to a gas claimant ~~where~~
892 ~~if~~ there ~~are~~ exists any gas title ~~conflicts~~ conflict, unknown gas ~~claimants~~ claimant, unlocatable
893 gas ~~claimants~~ claimant, unresolved gas heirship ~~issues~~ issue, or other ~~reasons~~ reason beyond the
894 reasonable control of the coalbed methane gas well operator or ~~where~~ if the gas claimant fails to
895 provide the coalbed methane gas well operator with the information required under applicable
896 law or regulation to pay royalties. ~~In such cases~~ If the Board so declines to order payment to be
897 made to a gas claimant, the coalbed methane gas well operator shall provide each affected gas
898 claimant and the Board with written notice of the ~~same~~ reason payment is not required to be
899 made in accordance with the applicable provisions of § ~~45.1-361.19~~ ~~45.2-xxx~~. ~~Where~~ If
900 payment is not required to be made due to the gas claimant's failure to provide needed
901 information under applicable law or regulation, the notice shall identify the information that is
902 needed to enable the payment to be made.

903 C. For a coalbed methane gas well voluntarily pooled at any time, the coalbed methane
904 gas well operator shall pay royalties, including past royalties held, to each gas claimant unless,
905 within 45 days of the coalbed methane gas well operator's provision of written notice to the coal
906 claimant that the operator will be paying royalties to the gas claimants, the coal claimant
907 provides the coalbed methane gas well operator and each gas claimant with evidence of a
908 proceeding or agreement. For ~~units~~ any unit voluntarily pooled before July 1, 2015, the coalbed
909 methane gas well operator shall provide such written notice to ~~the each~~ gas ~~claimants~~ claimant
910 and coal ~~claimants~~ claimant on or before January 1, 2016. For ~~units~~ any unit voluntarily pooled

911 on or after July 1, 2015, the coalbed methane gas well operator shall provide such written notice
912 to ~~the~~ each gas ~~claimants~~ claimant and coal ~~claimants~~ claimant not later than 45 days after
913 production commences. However, the coalbed methane gas well operator shall not be required
914 to make payment to a gas claimant ~~where if~~ there ~~are~~ exists any gas title ~~conflicts~~ conflict,
915 unknown gas ~~claimants~~ claimant, unlocatable gas ~~claimants~~ claimant, unresolved gas heirship
916 ~~issues~~ issue, or other ~~reasons~~ reason beyond the reasonable control of the coalbed methane gas
917 well operator or ~~where if~~ the gas claimant fails to provide the coalbed methane gas well operator
918 with information to process or pay royalties. ~~In such cases~~ If the Board so declines to order
919 payment to be made to a gas claimant, the coalbed methane gas well operator shall provide each
920 affected gas claimant with written notice of the ~~same~~ reason payment is not required to be made
921 in accordance with the applicable provisions of § 45.2-xxx. ~~Where~~ If payment is not required to
922 be made due to a gas claimant's failure to provide needed information, the notice shall identify
923 the information that is needed to enable the payment to be made.

924 D. Any pending judicial or arbitration proceeding shall be pursued by the coal claimant
925 with diligence and shall not be voluntarily dismissed or nonsuited without the consent of the gas
926 claimant. No default judgment shall be entered against a gas claimant in such proceeding.
927 Royalties shall be paid as determined by the final order in the proceeding. A prevailing gas
928 claimant shall be entitled to recover from ~~that~~ the nonprevailing coal claimant reasonable costs
929 and attorney fees if such ~~person~~ gas claimant substantially prevails on the merits of the case and
930 the coal claimant's position is not substantially justified.

931 E. A coalbed methane gas well operator paying funds to a gas claimant in accordance
932 with this section shall have no liability to a coal claimant for the payments made by the coalbed
933 methane gas well operator to a gas claimant.

934 F. This section shall not operate to extinguish any other right or cause of action or
935 ~~defenses~~ defense thereto that may exist, including, ~~but not limited to, claims~~ any claim for an
936 accounting or ~~a~~ claim under § 8.01-31. Nothing in this section shall create, confer, or impose a
937 fiduciary duty.

938 **Drafting note: Technical changes are made, including changes pursuant to § 1-227,**
939 **which states that throughout the Code any word used in the singular includes the plural**
940 **and vice versa. Language is updated for clarity, and the procedural provisions of**
941 **subsections B and C are clarified and made parallel. In subsection F, the phrase "but not**
942 **be limited to" is removed pursuant to § 1-218, which states that throughout the Code**
943 **"Includes' means includes, but not limited to."**

944 § ~~45.1-361.23~~ 45.2-xxx. Appeals of the Director's decisions; notices; hearings and
945 orders.

946 A. With the exception of an aggrieved permit applicant, no person shall have standing to
947 appeal a decision of the Director to the Board concerning a new permit application unless such
948 person has previously filed an objection with the Director pursuant to the provisions of § ~~45.1-~~
949 ~~361.35~~ 45.2-xxx.

950 B. When a person applies for a hearing to appeal a decision of the Director to the Board,
951 the Board shall, at least ~~twenty~~ 20 days prior to the hearing, give notice by certified mail, return
952 receipt requested, to the person making the appeal and, if different, to the gas or oil operator
953 subject to the appeal.

954 C. Upon submittal of the petition for appeal of a decision of the Director to the Board,
955 the Director shall forward to the Board (i) the permit application or order and associated
956 documents; (ii) all required notices; and (iii) the written objections, proposals, and claims
957 recorded during the informal ~~fact finding~~ fact-finding hearing.

958 D. In any appeal involving a permit of a new well ~~which~~ that was objected to pursuant to
959 the provisions of § ~~45.1-361.11, § 45.1-361.12,~~ 45.2-xxx or 45.2-xxx or by a gas storage field
960 operator who asserts that the proposed well work will adversely affect the operation of a ~~State~~
961 ~~Corporation Commission-certificated~~ gas storage field certificated by the State Corporation
962 Commission, the filing of a petition for appeal shall stay any permit until the case is decided by
963 the Board or the stay is dissolved by a court of record. However, in an appeal by a gas storage
964 field operator, such automatic stay shall not apply to any oil, gas, or coalbed methane ~~wells~~ well

965 completed more than ~~one hundred~~ 100 feet above the cap rock above the storage stratum. In ~~all~~
966 any other ~~appeals~~ appeal, the Director may order the permit or other decision stayed for good
967 cause shown until the case is decided by the Board or the stay is dissolved by a court of record.
968 An appeal based on an alleged risk of danger to any person not engaged in the gas or oil ~~and gas~~
969 operations shall be prima facie proof of good cause for a stay.

970 E. The Board shall conduct all hearings under this section in accordance with the formal
971 litigated issues hearing provisions of Article 3 (§ 2.2-4020 et seq.) of the Administrative Process
972 Act ~~(§ 2.2-4020 et seq.)~~. However, ~~all persons~~ any person to whom notice is required to be
973 given pursuant to subsection B ~~of this section~~ shall have standing to be heard at the hearing. The
974 Board shall render its decision on such appeals within ~~thirty~~ 30 days of the hearing's closing
975 date and shall provide notification of its decision to all parties pursuant to the provisions of the
976 Administrative Process Act (§ 2.2-4000 et seq.).

977 **Drafting note: The word "oil," apparently omitted in error from subsection B, is**
978 **inserted. Technical changes are made pursuant to § 1-227, which states that throughout**
979 **the Code any word used in the singular includes the plural and vice versa. In subsection D,**
980 **the term "oil and gas operations" is adjusted to conform to the defined term, "gas or oil**
981 **operations." Technical changes are made and language is updated for modern usage.**

982 § ~~45.1-361.24~~ 45.2-xxx. Enforcement.

983 The provisions of this article shall be enforced by the Director pursuant to the provisions
984 of Article 3 (§ ~~45.1-361.27~~ 45.2-xxx et seq.) ~~of this chapter~~. In addition, ~~should~~ if any person
985 ~~violate~~ violates or ~~threaten~~ threatens to violate any provision of this article, regulation
986 ~~promulgated~~ adopted thereunder, or order of the Board, the Board may maintain suit to restrain
987 any such violation or threatened violation.

988 **Drafting note: Changes are made pursuant to § 1-227, which states that throughout**
989 **the Code any word used in the singular includes the plural and vice versa. The term**
990 **"regulation promulgated" is changed to "regulation adopted" in keeping with recent title**

991 revisions because "adopt" is more widely used and includes the promulgation process.

992 **Technical changes are made and language is updated for modern usage.**

993 § ~~45.1-361.25~~ 45.2-xxx. Standing when Director or Board fails to act.

994 ~~Should~~ If the Director or Board ~~fail~~ fails to take enforcement action within ~~ten~~ 10 days
995 of the Board's receipt of a petition alleging that the petitioner is or will be adversely affected by
996 a violation or threatened violation of any provision of this article, regulation adopted thereunder,
997 or ~~an~~ order of the Board, the petitioner shall have standing to file a complaint in the appropriate
998 circuit court. The Board, in addition to the ~~persons who are~~ person violating or threatening to
999 violate ~~any~~ the provision of this article, regulation adopted thereunder, or order of the Board,
1000 shall be made a party to any such action.

1001 **Drafting note: A change is made pursuant to § 1-227, which states that throughout**
1002 **the Code any word used in the singular includes the plural and vice versa. Technical**
1003 **changes are made and language is updated for modern usage.**

1004 § ~~45.1-361.26~~ 45.2-xxx. Recording of orders.

1005 The Inspector shall cause a true copy of any order entered by the Board ~~which~~ that
1006 establishes a drilling unit or pools any interests to be recorded in the office of the clerk of the
1007 circuit court of each ~~jurisdiction~~ locality wherein any portion of the relevant drilling unit is
1008 located. Such ~~orders~~ order shall be recorded in the record book in which gas or oil leases are
1009 normally recorded. The sole charge for recordation shall be a tax equal to ~~ten dollars~~ \$10 plus
1010 ~~one dollar~~ \$1 per page of the order. The recordation from the time noted thereon by the clerk
1011 shall be notice of the order to all persons.

1012 **Drafting note: A change is made pursuant to § 1-227, which states that throughout**
1013 **the Code any word used in the singular includes the plural and vice versa. Technical**
1014 **changes are made and language is updated for modern usage.**

1015 Article 3.

1016 Regulation of Gas and Oil Development and Production.

1017 **Drafting note: Existing Article 3, relating to regulation of gas and oil development**
1018 **and production, is retained.**

1019 § ~~45.1-361.27~~ 45.2-xxx. Duties, responsibilities, and authority of the Director.

1020 A. The Director shall ~~promulgate~~ adopt and enforce ~~rules~~, regulations and orders
1021 necessary to ensure the safe and efficient development and production of gas and oil resources
1022 located in the Commonwealth. Such ~~rules~~, regulations and orders shall be designed to:

1023 1. Prevent pollution of state waters and require compliance with the ~~Water Quality~~
1024 ~~Standards~~ water quality standards adopted by the State Water Control Board;

1025 2. Protect against ~~off-site~~ offsite disturbances from gas, oil, or geophysical operations;

1026 3. Ensure the restoration of all sites disturbed by gas, oil, or geophysical operations;

1027 4. Prevent the escape of the Commonwealth's gas and oil resources;

1028 5. Provide for safety in coal and mineral mining and coalbed methane well and related
1029 facility operations;

1030 6. Control wastes from gas, oil, or geophysical operations;

1031 7. Provide for the accurate measurement of gas and oil production and delivery to the
1032 first point of sale; and

1033 8. Protect the public safety and general welfare.

1034 B. In ~~promulgating rules and~~ adopting regulations, and when issuing orders for the
1035 enforcement of the provisions of this article, the Director shall consider the following factors:

1036 1. The protection of the citizens and environment of the Commonwealth from the public
1037 safety and environmental risks associated with the development and production of gas or oil;

1038 2. The means of ensuring the safe recovery of coal and other minerals without
1039 substantially affecting the right of coal, minerals, gas, oil, or geophysical operators to explore
1040 for and produce coal, minerals, gas, or oil; and

1041 3. The protection of safety and health on permitted sites for coalbed methane wells and
1042 related facilities.

1043 C. In ~~promulgating rules,~~ adopting regulations and orders, the Director ~~shall be~~ is
1044 authorized to set and enforce standards governing the following: gas or oil ground-disturbing
1045 geophysical exploration; the development, drilling, casing, equipping, operating, and plugging
1046 of gas or oil production, storage, enhanced recovery, or disposal wells; the development,
1047 operation, and restoration of site disturbances for wells, gathering pipelines, and associated
1048 facilities; and gathering pipeline safety.

1049 D. Whenever the Director determines that an emergency exists, he shall issue an
1050 emergency order without advance notice or hearing. Such ~~orders~~ order shall have the same
1051 validity as ~~orders~~ an order issued with advance notice and hearing, but shall remain in force no
1052 longer than ~~thirty~~ 30 days from ~~their~~ its effective date. After issuing an emergency order, the
1053 Director shall promptly notify the public of the order by publication and hold a public hearing
1054 for the purposes of modifying, repealing, or making permanent the emergency order.
1055 ~~Emergency orders~~ An emergency order shall prevail as against a general ~~regulations~~ regulation
1056 or ~~orders~~ order when in conflict ~~therewith~~ with it. Emergency orders shall apply to gas, oil, or
1057 geophysical operations and to particular fields, geographical areas, subject areas, subject ~~matter~~
1058 matters, or situations.

1059 E. The Director ~~shall~~ also ~~have~~ has the authority to:

1060 1. Issue, condition, and revoke permits;

1061 2. Issue notices of violation and orders upon violations of any provision of this chapter
1062 or regulation adopted thereunder;

1063 3. Issue closure orders in cases of imminent danger to persons or damage to the
1064 environment or upon a history of violations;

1065 4. Require or forfeit bonds or other financial securities;

1066 5. Prescribe the nature of and form for the presentation of any information ~~and~~ or
1067 documentation required by any provision of this article or regulation adopted thereunder;

1068 6. Maintain suit in the county or city ~~or county~~ where a violation has occurred or is
1069 threatened, or wherever a person who has violated or threatens to violate any provision of this
1070 chapter ~~may be~~ is found, in order to restrain the actual or threatened violation;

1071 7. At reasonable times and under reasonable circumstances, enter upon any property and
1072 take such action as is necessary to administer and enforce the provisions of this chapter; and

1073 8. Inspect and review all properties and records thereof as are necessary to administer
1074 and enforce the provisions of this chapter.

1075 F. The Director shall have no jurisdiction to hear objections with respect to any matter
1076 subject to the jurisdiction of the Board as set out in Article 2 (§ 45.2-xxx et seq.). Such
1077 objections shall be referred to the Board in a manner prescribed by the Director.

1078 **Drafting note: The term "promulgate regulations" is changed to "adopt**
1079 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
1080 **and includes the promulgation process. Technical changes are made pursuant to § 1-227,**
1081 **which states that throughout the Code any word used in the singular includes the plural**
1082 **and vice versa. Other technical changes are made and language is updated for modern**
1083 **usage. Subsection G of existing § 45.1-361.35 is moved to this section as proposed**
1084 **subsection F.**

1085 ~~§ 45.1-361.28~~ 45.2-xxx. Powers, duties, and responsibilities of the Inspector.

1086 A. The Inspector shall administer the laws and regulations and shall have access to all
1087 records and properties necessary for this purpose. He shall perform all duties delegated by the
1088 Director pursuant to ~~§ 45.1-161.5~~ 45.2-xxx and maintain permanent records of the following:

1089 1. Each application for a gas, oil, or geophysical operation and each permitted gas, oil, or
1090 geophysical operation;

1091 2. Meetings, actions, and orders of the Board;

1092 3. ~~Petitions~~ Each petition for mining coal within 200 feet of or through a well;

1093 4. ~~Requests~~ Each request for special plugging by a coal owner or coal operator; and

1094 5. All other records prepared pursuant to this chapter.

1095 B. The Inspector shall serve as the principal executive of the staff of the Board.

1096 C. The Inspector may take charge of well or corehole ~~operations~~ or pipeline emergency
1097 operations whenever a well or corehole blowout, release of hydrogen sulfide or other gases, or
1098 other serious accident occurs.

1099 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
1100 **throughout the Code any word used in the singular includes the plural and vice versa.**
1101 **Language is updated for clarity.**

1102 § ~~45.1-361.29~~ 45.2-xxx. Permit required; gas, oil, or geophysical operations; coalbed
1103 methane gas wells; environmental assessment.

1104 A. No person shall commence any ~~ground-disturbing~~ ground-disturbing activity for a
1105 well, gathering pipeline, geophysical exploration, or associated activity, ~~facilities~~ facility, or
1106 ~~structures~~ structure without first having obtained from the Director a permit to conduct such
1107 activity. Every permit application or permit modification application filed with the Director
1108 shall be verified by the permit applicant and shall contain all data, maps, plats, plans, and other
1109 information as required by regulation or the Director.

1110 B. For ~~permits~~ each permit issued on or after July 1, 1996, ~~or thereafter, a new permits~~
1111 permit issued by the Director shall be issued only for the following activities: geophysical
1112 operations, drilling, casing, equipping, stimulating, producing, reworking an initially productive
1113 ~~zones and zone~~, plugging a well, or gathering pipeline construction and operation. ~~Applications~~
1114 An application for a new ~~permits~~ permit to conduct geophysical operations shall be
1115 accompanied by an application fee of \$130. ~~Applications~~ An application for ~~all other~~ a new
1116 ~~permits~~ permit for any other activity shall be accompanied by an application fee of ~~\$260~~ \$600.

1117 C. For ~~permits~~ a permit issued prior to July 1, 1996, prior to commencing any reworking,
1118 deepening, or plugging of the well, or other activity not previously approved on the permitted
1119 site, a permittee shall first obtain a permit modification from the Director. ~~All applications~~ Each
1120 application for a permit ~~modifications~~ modification shall be accompanied by a permit
1121 modification fee of ~~\$130~~ \$300. For ~~permits~~ a permit issued on or after July 1, 1996, ~~or~~

1122 ~~thereafter~~, prior to commencing any new zone ~~completions~~ completion a permittee shall first
1123 obtain a permit modification from the Director.

1124 D. ~~All permits~~ Every permit and all operations provided for under this section shall
1125 conform to the ~~rules~~, regulations and orders of the Director and the Board. When permit terms
1126 or conditions required or provided for under ~~Article 3 (§ 45.1-361.27 et seq.) of this chapter~~
1127 article are in conflict with any provision of a conservation order issued pursuant to the
1128 provisions of Article 2 (§ ~~45.1-361.13~~ 45.2-xxx et seq.) ~~of this chapter~~, the terms or conditions
1129 of the permit shall control. In this event, the operator shall return to the Board for
1130 reconsideration of a conservation order in light of the conflicting permit. Every permittee shall
1131 be responsible for all operations, ~~activity~~ activities, or disturbances associated with the
1132 permitted site.

1133 E. No permit or permit modification shall be issued by the Director until he has received
1134 from the applicant a written certification that (i) all notice requirements of this article have been
1135 complied with, together with proof thereof, and (ii) the applicant has the right to conduct the
1136 operations as set forth in the application and operations plan.

1137 F. A permit shall be required to drill any coalbed methane gas well or to convert any
1138 methane drainage borehole into a coalbed methane gas well. In addition to the other
1139 requirements of this section, every permit application for a coalbed methane gas well shall
1140 include:

1141 1. The method that the coalbed methane gas well operator will use to stimulate the well.

1142 2. a. A signed consent from the coal operator of each coal seam ~~which~~ that is located
1143 within (i) 750 horizontal feet of the proposed well location ~~(i) which~~ that the applicant proposes
1144 to stimulate or ~~(ii) which is within~~ 100 vertical feet above or below a ~~coal-bearing~~ coal-bearing
1145 stratum ~~which~~ that the applicant proposes to stimulate.

1146 b. The consent required by this ~~section~~ subsection may be (i) contained in a lease or
1147 other such agreement; (ii) contained in an instrument of title; or (iii) in any case where a coal
1148 operator cannot be located or identified and the operator has complied with § ~~45.1-361.19~~ 45.2-

1149 [xxx](#), provided by a pooling order entered pursuant to § ~~45.1-361.21~~ [45.2-xxx](#) or ~~45.1-361.22~~ and
1150 ~~provided~~ [45.2-xxx](#) if such order contains a finding that the operator has exercised due diligence
1151 in attempting to identify and locate the coal operator, [contained in such order](#). The consent
1152 required by this ~~section~~ [subsection](#) shall be deemed to be granted for any tract where title to the
1153 coal is held by multiple owners if the applicant has obtained consent to stimulate from the co-
1154 tenants holding a majority interest in the tract and none of the coal co-tenants has leased the
1155 tract for coal development. The requirement of signed consent contained in this ~~section~~
1156 [subsection](#) shall in no way be considered to impair, abridge, or affect any contractual rights or
1157 objections arising out of a coalbed methane gas contract or coalbed methane gas lease entered
1158 into prior to January 1, 1990, between the applicant and any coal operator, ~~and or any extensions~~
1159 [extension](#) or ~~renewals~~ [renewal](#) thereto, and the existence of such lease or contractual
1160 arrangement and any ~~extensions~~ [extension](#) or ~~renewals~~ [renewal](#) thereto shall constitute a waiver
1161 of the requirement for the applicant to file an additional signed consent.

1162 3. The unit map, if any, approved by the Board.

1163 G. No permit required by this chapter for ~~activities~~ [an activity](#) to be conducted within an
1164 area of Tidewater Virginia where drilling is authorized under subsection B of § 62.1-195.1 shall
1165 be granted until the environmental impact assessment required by § 62.1-195.1 has been
1166 conducted and the assessment has been reviewed by the Department.

1167 H. The applicant for a permit for a gathering pipeline, oil or gas well, or coal bed
1168 methane well shall identify in the permit application any cemetery, as identified on a ~~U.S.G.S.~~
1169 [United States Geological Survey](#) topographic map or located by routine field review, within 100
1170 feet of the permitted activity.

1171 I. The operator of any coalbed methane well drilled within 250 feet of a cemetery shall
1172 comply with a written request of any person owning an interest in a private cemetery or the
1173 authorized agent of a public cemetery that the operator of such well suspend operations for a
1174 period from two hours before to two hours after any burial service that takes place on the
1175 surface area of such cemetery. However, if the well operator or a mine operator determines that

1176 suspension of such operations will have an adverse effect on the safety of the well operations or
1177 mining operations, the operator shall be under no obligation to comply with the request, and
1178 operation of the well shall continue.

1179 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
1180 **throughout the Code any word used in the singular includes the plural and vice versa.**
1181 **Clause designations in subdivision F 2 a are revised to correct an apparent organizational**
1182 **error. The first sentence of subdivision F 2 b is rewritten to avoid using conflicting**
1183 **meanings of the word "provided," and language is updated for clarity and modern usage.**

1184 § ~~45.1-361.30~~ 45.2-xxx. Notice of permit applications and permit modification
1185 applications required; content.

1186 A. Within one day of the day on which the application for a permit for a gas or oil
1187 operation is filed, the applicant shall provide notice of the application to the following persons:

1188 1. ~~All~~ Every surface-~~owners~~ owner, coal-~~owners~~ owner, and mineral-~~owners~~ owner on
1189 the tract to be drilled;

1190 2. ~~Coal operators~~ Every coal operator who ~~have~~ has registered an operation-~~plans~~ plan
1191 with the Department for activities located on the tract to be drilled;

1192 3. ~~All~~ Every surface-~~owners~~ owner on ~~tracts~~ a tract where the surface is to be disturbed;

1193 4. ~~All~~ Every gas, oil, or royalty-~~owners~~ owner (i) within one-half of the distance
1194 specified in § ~~45.1-361.17~~ 45.2-xxx for that type of well; or ~~within~~ one-half of the distance to
1195 the nearest well completed in the same pool, whichever is less, or (ii) within the boundaries of a
1196 drilling unit established pursuant to the provisions of this chapter;

1197 5. ~~All~~ Every coal-~~operators~~ operator who ~~have~~ has applied for or obtained a mining or
1198 prospecting permit with respect to ~~tracts~~ a tract located within 500 feet of the proposed well
1199 location or, in the case of a proposed coalbed methane gas well location, within 750 feet thereof;

1200 6. ~~All~~ Every coal-~~owners~~ owner or mineral-~~owners~~ owner on ~~tracts~~ a tract located within
1201 500 feet of the proposed well location or, in the case of a proposed coalbed methane gas well
1202 location, within 750 feet thereof; and

1203 7. ~~All operators~~ Every operator of a gas storage ~~fields~~ field certificated by the State
1204 Corporation Commission as a public utility facility whose certificated area includes the well
1205 location, or whose certificated boundary is within 1,250 feet of the proposed well location.

1206 B. Within one day of the day on which the application for a permit modification for a
1207 gas or oil operation is filed, the applicant requesting such permit modification shall provide
1208 notice of the application to all persons listed in subsection A ~~of this section~~ who may be directly
1209 affected by the proposed activity.

1210 C. Within one day of the day on which the application for a permit for geophysical
1211 operations is submitted, the applicant shall provide notice to those persons listed in subdivisions
1212 A 1, 2, and 3 ~~of subsection A of this section~~.

1213 D. ~~All notices~~ Each notice required to be given pursuant to ~~subsections~~ subsection A, B,
1214 ~~and or~~ C ~~of this section~~ shall contain a statement of the time within which objections may be
1215 made and the name and address of the person to whom objections shall be forwarded. Only
1216 ~~those persons~~ a person entitled to notice under ~~subsections~~ subsection A, B, ~~and or~~ C ~~of this~~
1217 ~~section~~ shall have standing to object to the issuance of the proposed permit or permit
1218 modification for a gas, oil, or geophysical operation as the use may be. Upon receipt of notice,
1219 any person may waive in writing the time and right to object.

1220 E. Within seven days of the day on which the application for a permit is filed, the
1221 applicant shall provide notice to (i) the local governing body or chief executive officer of the
1222 locality where the well is proposed to be located and (ii) the general public, through publication
1223 of a notice in at least one newspaper of general circulation ~~that is widely circulated~~ in the
1224 locality where the well is proposed to be located.

1225 F. An applicant shall make a reasonable effort to provide the notices required under
1226 subsections A, B, and C. If an applicant is unable to identify or locate any person to whom
1227 notice is required, then the notice provided in clause (ii) of subsection E shall be considered
1228 sufficient notice to such persons and the date of notification shall be the date of publication.

1229 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
1230 **throughout the Code any word used in the singular includes the plural and vice versa.**
1231 **Clause designations are added to subdivision A 4 for clarity. Language is updated for**
1232 **modern usage and the redundant phrase "that is widely circulated" is deleted. Technical**
1233 **changes are made.**

1234 § ~~45.1-361.31~~ 45.2-xxx. Bonding and financial security required.

1235 A. To ensure compliance with all laws and regulations pertaining to permitted activities
1236 and the furnishing of reports and other information required by the Board or Director, ~~all~~ each
1237 permit ~~applicants~~ applicant shall give bond with surety acceptable to the Director and payable to
1238 the Commonwealth. At the election of the permit applicant, a cash bond may be given. The
1239 amount of the bond required shall be sufficient to cover the costs of properly plugging the well
1240 and restoring the site, but in no case shall the amount of the bond be less than \$10,000 per well
1241 plus \$2,000 per acre of disturbed land, calculated to the nearest tenth of an acre. ~~Bonds~~ Each
1242 bond shall remain in force until released by the Director. The Director may require additional
1243 bond or financial security for any well proposed to be drilled in Tidewater Virginia.

1244 B. Upon receipt of an application for multiple permits for gas or oil operations and at the
1245 request of the permit applicant, the Director may, in lieu of requiring a separate bond for each
1246 permit, require a blanket bond. The amount of the blanket bond shall be as follows:

- 1247 1. For one to 10 wells, \$25,000.
- 1248 2. For 11 to 50 wells, \$50,000.
- 1249 3. For 51 to 200 wells, \$100,000.
- 1250 4. For more than 200 wells, \$200,000.

1251 For purposes of calculating blanket bond amounts, from one-tenth of an acre to five
1252 acres of disturbed land for a separately permitted gathering pipeline shall be equivalent to one
1253 well. The Director shall ~~promulgate~~ adopt regulations for the release of acreage used to calculate
1254 blanket bond amounts for separately permitted gathering pipelines in cases where sites have
1255 been stabilized.

1256 C. Any gas or oil operator who elects to post a blanket bond shall pay into the Gas and
1257 Oil Plugging and Restoration Fund those fees and assessments required under the provisions of
1258 § ~~45.1-361.32~~ 45.2-xxx.

1259 **Drafting note: The term "promulgate regulations" is changed to "adopt**
1260 **regulations" in keeping with recent title revisions because "adopt" is more widely used**
1261 **and includes the promulgation process. Technical changes are made pursuant to § 1-227,**
1262 **which states that throughout the Code any word used in the singular includes the plural**
1263 **and vice versa. The word "multiple" is added to the first sentence of subsection B for**
1264 **clarity.**

1265 § ~~45.1-361.32~~ 45.2-xxx. Gas and Oil Plugging and Restoration Fund.

1266 A. ~~The~~ There is hereby created in the state treasury a special nonreverting fund to be
1267 known as the Gas and Oil Plugging and Restoration Fund ~~is hereby established as a non-lapsing~~
1268 ~~revolving fund to be administered by the Department pursuant to the provisions of, referred to in~~
1269 this section. ~~The Fund shall consist of all~~ as "the Fund." All payments made into the Fund by
1270 gas or oil operators, all collections of debt for expenditures made from the Fund, and all interest
1271 payments made into the Fund pursuant to the provisions of this section shall be paid into the
1272 state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in
1273 the Fund and be credited to the Fund. The Fund shall be established on the books of the
1274 Comptroller and any ~~funds~~ moneys remaining in ~~such~~ the Fund, including interest thereon, at
1275 the end of ~~the biennium~~ each fiscal year shall not revert to the general fund but shall remain in
1276 the Fund. Expenditures and disbursements from the Fund shall be made by the State Treasurer
1277 on warrants issued by the Comptroller upon written request signed by the Director or his
1278 designee.

1279 B. ~~Pursuant to § 45.1-361.31, each gas or oil operator who has posted a blanket bond~~
1280 ~~shall pay into the Fund a fee of fifty dollars per permit held, by July 31, 1990.~~ Each permittee
1281 operating under a blanket bond pursuant to § 45.2-xxx [§ 45.1-361.31] shall annually pay to the
1282 Fund an amount equal to ~~fifty dollars~~ \$50 multiplied by the number of permits he then holds,

1283 such payment to be submitted with the annual report required under § ~~45.1-361.38~~ 45.2-xxx,
1284 until the payments and interest accruing to the Fund totals \$100,000. Whenever the Director
1285 determines that the Fund's balance has fallen below \$25,000 due to uncollectible debts, the
1286 Director shall assess a fee of \$50 per permit per year on each permittee with a blanket bond until
1287 the Fund's balance once again reaches \$100,000.

1288 C. ~~Disbursements from~~ Moneys in the Fund shall be used ~~only to supplement~~ solely for
1289 the purpose of supplementing bond proceeds in order to pay for the full cost of plugging and
1290 restoration in the event of a blanket bond forfeiture.

1291 D. The amount by which the cost of plugging and restoration exceeds the amount of the
1292 gas or oil operator's forfeited bond shall constitute a debt of the operator to the Commonwealth.
1293 The Director is authorized to collect such debts together with the costs of collection through
1294 appropriate legal action. All moneys collected pursuant to this subsection, less the costs of
1295 collection, shall be deposited in the Fund.

1296 E. ~~Once the initial balance of the Fund exceeds \$100,000, and thereafter whenever the~~
1297 ~~Director determines that the Fund's balance has fallen below \$25,000 due to uncollectible debts,~~
1298 ~~the Director shall assess a fee of fifty dollars per permit per year on all permittees with blanket~~
1299 ~~bonds until the Fund's balance once again reaches \$100,000.~~

1300 F. No permit shall be issued to a gas or oil operator until he has fully reimbursed the
1301 Commonwealth for any debt incurred pursuant to the provisions of subsection D ~~of this section~~.

1302 F. In the event of a discontinuance of the Fund, any amounts remaining in the Fund shall
1303 be returned to ~~all~~ each gas or oil ~~operators~~ operator with a blanket ~~bonds~~ bond in proportion to
1304 the number of permits under the blanket ~~bonds~~ bond of each operator.

1305 **Drafting note: The nonreverting fund language for the Gas and Oil Plugging and**
1306 **Restoration Fund is updated to reflect current language requested by the Department of**
1307 **the Treasury for nonreverting funds in the Code. Organizational changes are made: The**
1308 **final sentence of subsection A, regarding discontinuance of the Fund, is moved to end of**
1309 **the section and designated as subsection F; the first sentence of subsection B is deleted as**

1310 **obsolete; and subsection E is deleted, with relevant language moved to the end of**
1311 **subsection B. Technical changes are made, including changes pursuant to § 1-227, which**
1312 **states that throughout the Code any word used in the singular includes the plural and vice**
1313 **versa.**

1314 § ~~45.1-361.33~~ 45.2-xxx. Expiration of permits.

1315 ~~All permits~~ Each permit issued pursuant to this chapter shall expire 24 months from ~~their~~
1316 its date of issuance unless the permitted activity has commenced within that time period. An
1317 operator may renew ~~the~~ an existing permit for an additional 24 months by submitting a written
1318 request containing the coal operator's approval and remitting a \$325 renewal fee no later than
1319 the expiration date.

1320 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
1321 **throughout the Code any word used in the singular includes the plural and vice versa.**

1322 § ~~45.1-361.34~~ 45.2-xxx. Abandonment or cessation of well or corehole operation;
1323 plugging required.

1324 Upon the abandonment or cessation of the operation of any well or corehole, the gas, oil,
1325 or geophysical operator shall immediately fill and plug the well or corehole in the manner
1326 required by regulations in force at the time of abandonment or the operation's cessation.

1327 **Drafting note: No change.**

1328 § ~~45.1-361.35~~ 45.2-xxx. Objections to permits; hearing.

1329 A. Objections to a new permit or permit modification ~~permits~~ may be filed with the
1330 Director by ~~those~~ any person having standing as set out in § ~~45.1-361.30~~ 45.2-xxx. Such
1331 objections shall be filed within ~~fifteen~~ 15 days of the objecting party's receipt of the notice
1332 required by § ~~45.1-361.30~~ 45.2-xxx. ~~Persons~~ Any person objecting to a permit must state the
1333 reasons for ~~their~~ his objections.

1334 B. The only objections to permits or permit modifications that may be raised by a
1335 surface ~~owners~~ owner are:

1336 1. The operations plan for soil erosion and sediment control is not adequate or not
1337 effective;

1338 2. Measures in addition to the requirement for a well's water-protection string are
1339 necessary to protect ~~fresh water bearing~~ freshwater-bearing strata;

1340 3. The permitted work will constitute a hazard to the safety of any person;

1341 4. Location of the coalbed methane well or coalbed methane well pipeline will
1342 unreasonably infringe on the surface owner's use of the surface, ~~provided that~~ so long as a
1343 reasonable alternative site is available within the unit; and granting the objection will not
1344 materially impair any right contained in an agreement, valid at the time of the objection,
1345 between the surface owner and the operator or their predecessors or successors in interest; and

1346 5. If the surface owner is an interstate park commission, the location of the well or
1347 pipeline will unreasonably infringe on the surface owner's use of the surface, ~~provided that~~ so
1348 long as a reasonable alternative site is available within the unit; and ~~that~~ granting the objection
1349 will not materially impair any right contained in an agreement, valid at the time of the objection,
1350 between the surface owner and the operator or their predecessors or successors in interest.

1351 C. The only objections to permits or permit modifications that may be raised by a royalty
1352 ~~owners~~ owner are ~~whether that~~ the proposed well work:

1353 1. Directly impinges upon the royalty owner's gas and oil interest; ~~or~~

1354 2. Threatens to violate the objecting royalty owner's property or statutory rights aside
1355 from his contractual rights; and

1356 3. Would not adequately prevent the escape of the Commonwealth's gas and oil
1357 resources or provide for the accurate measurement of gas and oil production and delivery to the
1358 first point to sale.

1359 D. Objections to permits or permit modifications may be raised by a coal ~~owners~~ owner
1360 or ~~operators~~ operator pursuant to the provisions of §§ ~~45.1-361.11~~ 45.2-xxx and ~~45.1-361.12~~
1361 45.2-xxx.

1362 E. The only objections to permits or permit modifications that may be raised by a
1363 mineral ~~owners~~ owner are those that could be raised by a coal owner under § ~~45.1-361.11~~
1364 ~~provided 45.2-xxx so long as~~ the mineral owner makes the objection and affirmatively proves
1365 that it does in fact apply with equal force to the mineral in question.

1366 F. The only objections to permits or permit modifications that may be raised by a gas
1367 storage field ~~operators~~ operator are those in which the gas storage operator affirmatively proves
1368 that the proposed well work will adversely affect the operation of his ~~State Corporation~~
1369 ~~Commission-certificated~~ gas storage field certificated by the State Corporation Commission;
1370 however, nothing in this subsection shall be construed to preclude the owner of nonstorage
1371 strata from ~~the drilling-of-wells~~ a well for the purpose of producing oil or gas from any stratum
1372 above or below the storage stratum.

1373 G. ~~The Director shall have no jurisdiction to hear objections with respect to any matter~~
1374 ~~subject to the jurisdiction of the Board as set out in Article 2 (§ 45.1-361.13 et seq.) of this~~
1375 ~~chapter. Such objections shall be referred to the Board in a manner prescribed by the Director.~~

1376 H. The Director shall fix a time and place for an informal fact-finding hearing
1377 concerning ~~such objections~~ an objection filed pursuant to this section. The hearing shall ~~not~~ be
1378 scheduled for not less than ~~twenty~~ 20 nor more than ~~thirty~~ 30 days after the objection is filed.
1379 The Director shall prepare a notice of the hearing, stating all objections and by whom each is
1380 made, and send a copy of such notice by certified mail, return receipt requested, at least ~~ten~~ 10
1381 days prior to the hearing date, to the permit applicant and to every person with standing to
1382 object as prescribed by § ~~45.1-361.30~~ 45.2-xxx.

1383 I. ~~H.~~ At the hearing, ~~should~~ if the parties fail to come to an agreement, the Director shall
1384 proceed to decide the objection pursuant to those provisions of the Administrative Process Act
1385 (§ 2.2-4000 et seq.) relating to informal fact-finding procedures.

1386 **Drafting note: Language is updated for modern usage. Technical changes are**
1387 **made, including changes pursuant to § 1-227, which states that throughout the Code any**
1388 **word used in the singular includes the plural and vice versa. Subsection G, which**

1389 addresses the jurisdiction of the Director, is moved to a more appropriate location in
1390 existing § 45.1-361.27.

1391 § ~~45.1-361.36~~ 45.2-xxx. Appeals of Director's decisions to the Board.

1392 A. Any person with standing under the provisions of § ~~45.1-361.30~~ 45.2-xxx who is
1393 aggrieved by a decision of the Director may appeal to the Board, subject to the limitations
1394 imposed by subsection B ~~of this section~~, by petition to the Board filed within ~~ten~~ 10 days
1395 following the appealed decision.

1396 B. No petition for appeal may raise any matter other than ~~matters~~ a matter that was
1397 raised by the Director or ~~which~~ that the petitioner put in issue either by application or by
1398 ~~objections, proposals~~ an objection, proposal, or ~~claims~~ claim made and specified in writing at
1399 the informal fact-finding hearing held under § ~~45.1-361.35~~ 45.2-xxx leading to the appealed
1400 decision.

1401 **Drafting note: Language is updated for modern usage. Technical changes are**
1402 **made, including changes pursuant to § 1-227, which states that throughout the Code any**
1403 **word used in the singular includes the plural and vice versa.**

1404 § ~~45.1-361.37~~ 45.2-xxx. Persons required to register; designated agents.

1405 A. Any person who owns a well, drills a well, completes well work, operates any well or
1406 gathering pipeline, conducts ~~ground-disturbing~~ ground-disturbing geophysical explorations, or
1407 ~~who~~ transports gas or oil up to and including the first point of sale shall register with the
1408 Director and shall provide his name and address and the name, address, and official title of the
1409 person in charge of his operations in the Commonwealth.

1410 B. Any person registering under subsection A ~~of this section~~ shall designate the name
1411 and address of an agent who shall be the attorney-in-fact of the registrant for the purposes
1412 ~~hereinafter~~ set forth in this section. The designated agent shall be a resident of the
1413 Commonwealth. Notices, orders, other communications, and all processes issued pursuant to
1414 this chapter may be served upon or otherwise delivered to the designated agent as and for the

1415 operator. Any designation of an agent shall remain in force until the Director is notified in
1416 writing of a designation termination and the designation of a new agent.

1417 **Drafting note: Language is updated for clarity and technical changes are made.**

1418 § ~~45.1-361.38~~ 45.2-xxx. Report of permitted activities and production required; contents.

1419 A. Each holder of a permit for a gas or oil ~~wells~~ well or gathering ~~pipelines~~ pipeline shall
1420 file monthly and annual reports of his activities as prescribed by the Director. ~~These~~ Such
1421 reports shall be for the purpose of obtaining information regarding the production and sale of
1422 gas and oil resources, as well as information concerning the ownership and control of permitted
1423 activities. Filing of ~~these~~ such reports by a permittee shall be a condition of such permit. Every
1424 annual report filed by a permittee shall contain a certification that such permittee has paid all
1425 severance taxes levied under the provisions of §§ 58.1-3712, 58.1-3713, and 58.1-3741.

1426 B. At the same time that a permittee files the monthly and annual reports as required by
1427 subsection A, the permittee shall send copies of the reports by mail to the commissioner of the
1428 revenue of the political subdivision where the permitted wells are located.

1429 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
1430 **throughout the Code any word used in the singular includes the plural and vice versa.**

1431 **Language is updated for modern usage.**

1432 § ~~45.1-361.39~~ 45.2-xxx. Developing a gas or oil well as a water well.

1433 ~~Should~~ If any well drilled for gas or oil does not produce commercial or paying
1434 quantities of either resource, the well may be developed as a water well upon the request of the
1435 surface owner of the property on which the well is located. Any development of such a water
1436 well shall occur only after notice is given to the Director and his approval has been received.
1437 Such development of a water well shall be performed in accordance with applicable state and
1438 local requirements. Unless the gas or oil operator and surface owner otherwise agree, the surface
1439 owner shall pay the gas or oil operator a reasonable sum for all casing and tubing set and left in
1440 the well ~~which~~ that would have otherwise been removed upon plugging of the well.

1441 **Drafting note: Language is updated for modern usage.**

1442 § ~~45.1-361.40~~ 45.2-xxx. Orphaned Well Fund; orphaned wells.

1443 A. ~~The~~ There is hereby created in the state treasury a special nonreverting fund to be
1444 known as the Orphaned Well Fund, referred to in this section as "the ~~Fund,~~" ~~is hereby~~
1445 ~~established in the state treasury as a special non-lapsing revolving fund to be administered by~~
1446 ~~the Department pursuant to the provisions of this section. The Fund shall consist of such~~ Fund."
1447 All moneys ~~as are~~ appropriated to it ~~by the General Assembly~~ and ~~such~~ any surcharges ~~as are~~
1448 collected pursuant to subsection D shall be paid into the state treasury and credited to the Fund.
1449 Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. The
1450 ~~Orphaned Well~~ Fund shall be established on the books of the Comptroller ~~and any funds.~~ Any
1451 moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not
1452 revert to the general fund but shall remain in the Fund. ~~In the event of a discontinuance of the~~
1453 ~~Fund, any amounts remaining in it shall be placed in the Gas and Oil Plugging Restoration~~
1454 ~~Fund.~~ Moneys from the Fund shall be used ~~only~~ solely for purposes of restoration and plugging
1455 of orphaned wells. Expenditures and disbursements from the Fund shall be made by the State
1456 Treasurer on warrants issued by the Comptroller upon written request signed by the Director or
1457 his designee.

1458 B. The Director shall conduct a survey to determine the condition and location of
1459 orphaned wells in the Commonwealth. He shall establish priorities for the plugging and
1460 restoration of the identified orphaned wells. The plugging and restoration of orphan well sites
1461 that pose an imminent danger to public safety shall have the highest priority.

1462 C. In performing his duties under this section, the Director shall make every reasonable
1463 effort to identify and obtain the permission of a surface owner prior to entering onto the surface
1464 owner's land. In all cases, the Director shall as soon as practicable cause to be published in a
1465 newspaper of general circulation in the county or city wherein an orphaned well is located a
1466 notice of the proposed plugging and restoration work to be conducted on the property.

1467 D. Each operator who applies for a new permit for any activity other than geophysical
1468 operations shall pay a \$200 surcharge per permit into the Fund. Such surcharge shall continue

1469 until the Director determines all orphaned wells in the Commonwealth are properly plugged and
1470 their sites are properly stabilized.

1471 E. In the event of a discontinuance of the Fund, any amounts remaining in it shall be
1472 placed in the Gas and Oil Plugging Restoration Fund created pursuant to § 45.2-xxx [§ 45.1-
1473 361.32].

1474 **Drafting note: The nonreverting fund language for the Gas and Oil Plugging and**
1475 **Restoration Fund is updated to reflect current language requested by the Department of**
1476 **the Treasury for nonreverting funds in the Code. A sentence in subsection A, regarding**
1477 **discontinuance of the Fund, is moved to end of the section and designated as subsection E.**
1478 **Technical changes are made, including changes pursuant to § 1-227, which states that**
1479 **throughout the Code any word used in the singular includes the plural and vice versa. A**
1480 **cross-reference to § 45.2-xxx [existing § 45.1-361.32], which creates the Gas and Oil**
1481 **Plugging and Restoration Fund, is added.**

1482 ~~§ 45.1-361.41~~ 45.2-xxx. Interference by injection wells with ~~ground water~~ groundwater
1483 supply.

1484 A. For purposes of this section:

1485 "Beneficial use" means the same as that term is defined in § 62.1-255.

1486 "Groundwater" means the same as that term is defined in § 62.1-255.

1487 B. Any person who owns or operates an injection well in a manner that proximately
1488 causes the contamination or diminution of ~~ground water~~ groundwater used for a beneficial use
1489 by any person who resides within the lesser of (i) the area of review required by the ~~United~~
1490 ~~States~~ U.S. Environmental Protection Agency for the permitting of ~~that~~ such injection well, or
1491 (ii) a ~~one-half mile~~ one-half-mile radius of the well shall provide the person with a replacement
1492 water supply. A replacement water supply shall provide the person ~~or persons~~ with water of
1493 equivalent quality and quantity as was provided by ~~ground water~~ groundwater prior to the
1494 contamination or diminution of the water supply resulting from the operation of the injection
1495 well. A replacement water supply shall include the provision of necessary storage and service

1496 facilities. ~~"Ground water" shall have the same meaning ascribed to it in § 62.1-255. "Beneficial~~
1497 ~~use" shall have the same meaning ascribed to it in § 62.1-10.~~

1498 ~~B. C.~~ This section shall apply to any injection well, ~~whether~~ operating under a permit
1499 from the Director ~~of the Department of Mines, Minerals and Energy issued prior to, on or after~~
1500 ~~July 1, 1992.~~

1501 **Drafting note: Definitions applicable to the section are moved to a new first**
1502 **subsection and the citation for the definition of "beneficial use" is corrected. Technical**
1503 **changes are made, including changes pursuant to § 1-227, which states that throughout the**
1504 **Code any word used in the singular includes the plural and vice versa. The reference to a**
1505 **permit issued prior to, on, or after July 1, 1992, is removed as meaningless. Language is**
1506 **updated for modern usage.**

1507 § ~~45.1-361.42~~ [45.2-xxx](#). Safety in coalbed methane gas, oil, and geophysical operations.

1508 The Director shall inspect permitted coalbed methane well and related facility operations
1509 to ensure the safety of persons on permitted sites. When ~~the~~ [an](#) inspection reveals any hazardous
1510 condition that creates an imminent danger, the Director shall issue a closure order pursuant to §
1511 ~~45.1-361.27~~ [45.2-xxx](#) requiring the area to be cleared or the equipment removed from use,
1512 except for (i) work necessary to continue to vent methane from an active underground mine if ~~it~~
1513 [such work](#) can be done safely and (ii) any work necessary to correct or eliminate the imminent
1514 danger. The Director shall lift the closure order when he finds that the imminent danger has
1515 been corrected or eliminated. When ~~the~~ [an](#) inspection reveals any other condition that creates a
1516 risk to the safety or health of any person on the permitted site, the Director shall notify the
1517 Department of Labor and Industry for actions under Title 40.1, as applicable.

1518 **Drafting note: Language is updated for clarity.**

1519 [Article 4.](#)

1520 [Drilling for Gas or Oil in the Chesapeake Bay or Tidewater Virginia.](#)

1521 **Drafting note: Existing §§ 62.1-195.1 and 62.1-195.3, relating to drilling in the**
1522 **Chesapeake Bay and Tidewater Virginia, are relocated to proposed Article 4.**

1523 § ~~62.1-195.1~~ 45.2-xxx. Chesapeake Bay; drilling for ~~oil or~~ gas or oil prohibited.

1524 ~~A.~~ Notwithstanding any other law, ~~a no~~ person shall ~~not~~ drill for ~~oil or~~ gas or oil in the
1525 waters of the Chesapeake Bay or any of its tributaries. The provisions of this subsection shall be
1526 enforced consistent with the requirements of Chapter xx [22.1] (§ 45.2-xxx [§ 45.1-361.1] et
1527 seq.).

1528 **Drafting note: Existing § 62.1-195.1 is divided into two proposed sections to**
1529 **separate two distinct topics. The first sentence of the existing section, prohibiting drilling**
1530 **in the Chesapeake Bay, is retained in the proposed section. The terms in the phrase "oil or**
1531 **gas" are reversed for consistency with the rest of the chapter. The prohibitory language in**
1532 **the first sentence is recast in affirmative form consistent with current drafting practice.**
1533 **The second sentence of the proposed section contains the enforcement language from**
1534 **existing subsection G that is applicable to the proposed section.**

1535 § 45.2-xxx. Tidewater Virginia; drilling for gas or oil prohibited in certain areas.

1536 A. In Tidewater Virginia, as defined in § 62.1-44.15:68, ~~a no~~ person shall ~~not~~ drill for ~~oil~~
1537 ~~or~~ gas ~~in, whichever is the greater distance~~ or oil (i) within 500 feet of the shoreline of the
1538 waters of the Chesapeake Bay or any of its tributaries, as measured landward of the shoreline;
1539 or (ii) if it is farther than 500 feet from such shoreline, in any

1540 ~~1. These~~ Chesapeake Bay Preservation ~~Areas~~ Area, as defined in § 62.1-44.15:68, ~~which~~
1541 that a local government designates as ~~"Resource~~ a Resource Protection ~~Areas"~~ Area and
1542 incorporates into its local comprehensive plan. ~~"Resource~~ Resource Protection ~~Areas"~~ Areas
1543 shall be defined according to the criteria developed by the State Water Control Board pursuant
1544 to § 62.1-44.15:72.

1545 ~~;~~

1546 ~~2. Five hundred feet from the shoreline of the waters of the Chesapeake Bay or any of its~~
1547 ~~tributaries.~~

1548 B. ~~In the event that~~ If any person desires to drill for ~~oil or~~ gas or oil in any area of
1549 Tidewater Virginia where drilling is not prohibited by the provisions of subsection A, he shall

1550 submit [an environmental impact assessment](#) to the Department ~~of Mines, Minerals and Energy~~
1551 as part of his application for a permit to drill ~~an environmental impact assessment. The~~ Such
1552 environmental impact assessment shall include:

1553 1. The probabilities and consequences of accidental discharge of ~~oil or~~ gas or oil into the
1554 environment during drilling, production, and transportation on:

1555 a. Finfish, shellfish, and other marine or freshwater organisms;

1556 b. Birds and other wildlife that use the air and water resources;

1557 c. Air and water quality; and

1558 d. Land and water resources;

1559 2. Recommendations for minimizing any adverse economic, fiscal, or environmental
1560 impacts; and

1561 3. An examination of the secondary environmental effects of induced economic
1562 development due to the drilling and production.

1563 C. Upon receipt of an environmental impact assessment, the Department ~~of Mines,~~
1564 ~~Minerals and Energy~~ shall notify the Department of Environmental Quality to coordinate a
1565 review of the environmental impact assessment. The Department of Environmental Quality
1566 shall:

1567 1. Publish in the Virginia Register of Regulations a notice that is sufficient to identify
1568 the environmental impact assessment and ~~providing~~ provides an opportunity for public review
1569 of and comment on the assessment. The period for public review and comment shall not be less
1570 than 30 days from the date of publication;

1571 2. Submit the environmental impact assessment to all appropriate state agencies to
1572 review the assessment and submit their comments to the Department of Environmental Quality;
1573 and

1574 3. Based upon the review by all appropriate state agencies and the public comments
1575 received, submit findings and recommendations to the Department ~~of Mines, Minerals and~~

1576 ~~Energy~~, within 90 days after notification and receipt of the environmental impact assessment
1577 from the Department.

1578 D. The Department ~~of Mines, Minerals and Energy may~~ shall not grant a permit under §
1579 ~~45.1-361.29~~ 45.2-xxx until it has considered the findings and recommendations of the
1580 Department of Environmental Quality.

1581 E. The Department of Environmental Quality shall, in conjunction with other state
1582 agencies and in conformance with the Administrative Process Act (§ 2.2-4000 et seq.), develop
1583 criteria and procedures to assure the orderly preparation and evaluation of environmental impact
1584 assessments required by this section.

1585 F. A person may drill an exploratory well or a gas well in any area of Tidewater Virginia
1586 where drilling is not prohibited by the provisions of subsection A only if:

1587 1. For directional drilling, the person has the permission of the owners of all lands to be
1588 directionally drilled into;

1589 2. The person files an oil discharge contingency plan and proof of financial
1590 responsibility to implement the plan, ~~both of which have been~~ already filed with and approved
1591 by the State Water Control Board. For purposes of this section, ~~the~~ such oil discharge
1592 contingency plan shall comply with the requirements set forth in § 62.1-44.34:15. The State
1593 Water Control Board's regulations governing the amount of any financial responsibility required
1594 shall take into account the type of operation, location of the well, the risk of discharge or
1595 accidental release, the potential damage or injury to state waters or sensitive natural resource
1596 features or the impairment of their beneficial use that may result from discharge or release, the
1597 potential cost of containment and cleanup, and the nature and degree of injury or interference
1598 with general health, welfare and property that may result from discharge or accidental release;

1599 3. All land-disturbing activities resulting from the construction and operation of the
1600 permanent facilities necessary to implement the contingency plan and the area within the berm
1601 will be located outside ~~of those areas~~ any area described in subsection A;

- 1602 4. The drilling site is stabilized with boards ~~or~~ gravel, or other materials ~~which~~ that will
1603 result in minimal amounts of runoff;
- 1604 5. Persons certified in blowout prevention are present at all times during drilling;
- 1605 6. Conductor pipe is set as necessary from the surface;
- 1606 7. Casing is set and pressure grouted from the surface to a point at least 2500 feet below
1607 the surface or 300 feet below the deepest known ground water, as defined in § 62.1-255, for a
1608 beneficial use, as defined in § 62.1-10, whichever is deeper;
- 1609 8. Freshwater-based drilling mud is used during drilling;
- 1610 9. There is no onsite disposal of drilling muds, produced contaminated fluids, waste
1611 contaminated fluids, or other contaminated fluids;
- 1612 10. Multiple blow-out preventers are employed; and
- 1613 11. The person complies with all requirements of Chapter ~~22.1 xx~~ (§ ~~45.1-361.1~~ 45.2-
1614 xxx et seq.) ~~of Title 45.1~~ and regulations ~~promulgated~~ adopted thereunder.
- 1615 G. The provisions of subsection A and subdivisions F 1 and 4 through 9 shall be
1616 enforced consistent with the requirements of Chapter ~~22.1 xx~~ (§ ~~45.1-361.1~~ 45.2-xxx et seq.) ~~of~~
1617 ~~Title 45.1~~.
- 1618 H. ~~In the event that~~ If exploration activities in Tidewater Virginia result in a finding by
1619 the Director ~~of the Department of Mines, Minerals and Energy~~ that production of commercially
1620 recoverable quantities of oil is likely and imminent, the Director ~~of the Department of Mines,~~
1621 ~~Minerals and Energy~~ shall notify the Secretary of Commerce and Trade and the Secretary of
1622 Natural Resources. At that time, the Secretaries shall develop a joint report to the Governor and
1623 the General Assembly assessing the environmental risks and safeguards; transportation issues;
1624 state-of-the-art oil production well technology; economic impacts; regulatory initiatives;
1625 operational standards; and other matters related to the production of oil in the region. No
1626 ~~permits~~ permit for an oil production ~~wells~~ well shall be issued until (i) the Governor has had an
1627 opportunity to review the report and make recommendations, in the public interest, for
1628 legislative and regulatory changes, (ii) the General Assembly, during the next upcoming regular

1629 session, has acted on the Governor's recommendations or on its own initiatives, and (iii) any
1630 resulting legislation has become effective. The report by the Secretaries and the Governor's
1631 recommendations shall be completed within 18 months of the [notification of the Secretaries of](#)
1632 [the findings of the Director](#) ~~of the Department of Mines, Minerals and Energy.~~

1633 **Drafting note: Existing § 62.1-195.1 is divided into two proposed sections to**
1634 **separate two distinct topics. The bulk of the existing section, from the second sentence to**
1635 **the end of the section, restricts drilling in Tidewater Virginia and is retained as this**
1636 **proposed section. The terms in the phrase "oil or gas" are reversed for consistency with**
1637 **the rest of the chapter. Proposed subsection A is reorganized for clarity and the**
1638 **prohibitory language in that subsection is recast in affirmative form consistent with**
1639 **current drafting practice. Other technical changes are made for clarity, including changes**
1640 **to make the use of "shall" and "may" consistent and changes pursuant to § 1-227, which**
1641 **states that throughout the Code any word used in the singular includes the plural and vice**
1642 **versa.**

1643 ~~§ 62.1-195.3~~ [45.2-xxx](#). Hydraulic fracturing; groundwater management area.

1644 No person shall conduct any hydraulic fracturing in any well that has been drilled
1645 through any portion of a groundwater management area declared by regulation prior to January
1646 1, 2020, pursuant to the provisions of the Ground Water Management Act of 1992 (§ 62.1-254
1647 et seq.). For purposes of this section, "hydraulic fracturing" means the treatment of a well by the
1648 application of hydraulic fracturing fluid, including a base fluid and any additive, under pressure
1649 for the express purpose of initiating or propagating fractures in a target geologic formation to
1650 enhance production of oil or natural gas.

1651 **Drafting note: No change.**

1652 Article 5.

1653 Replacement of Water by Gas Well Operators.

1654 **Drafting note: Existing Article 4, relating to replacement of water by gas well**
1655 **operators, is retained.**

1656 § ~~45.1-361.43~~ 45.2-xxx. Operator's right to sample water ~~and quality~~.

1657 An operator shall have the right to enter upon surface land at reasonable times and in a
1658 reasonable manner to obtain samples of water from any water ~~wells~~ well that ~~are~~ is (i) located
1659 within 1,320 feet of a proposed or existing gas well and (ii) actually being utilized by the
1660 surface owner or occupant for domestic use. If the surface owner or occupant refuses to allow
1661 the operator to sample or causes the operator to be prevented from sampling any such water
1662 well, the operator shall promptly notify the Department of such refusal or prevention. The
1663 Department shall maintain a record of such notifications. In the event of such a refusal or
1664 prevention, the surface owner shall not be entitled to the remedies set forth in § ~~45.1-361.44~~
1665 45.2-xxx.

1666 **Drafting note: The reference to "quality" is removed from the catchline because it**
1667 **is not mentioned in the section. Technical changes are made pursuant to § 1-227, which**
1668 **states that throughout the Code any word used in the singular includes the plural and vice**
1669 **versa.**

1670 § ~~45.1-361.44~~ 45.2-xxx. Replacement of water supply.

1671 If any water supply of a surface owner who obtains all or part of his supply of water for
1672 domestic use from a water well has been materially affected by contamination or partial or
1673 complete interruption proximately resulting from a gas well operation within 1,320 feet of the
1674 water well, the operator of such gas well shall promptly provide a replacement water supply
1675 ~~which~~ that shall be capable of meeting the uses such water supply met prior to the
1676 contamination or partial or complete interruption.

1677 **Drafting note: Language is updated for modern usage.**

1678 #

Agenda Item 3 con't - Chapters 17-19, Energy Generally

1 SUBTITLE V.

2 OTHER SOURCES OF ENERGY; ENERGY POLICY.

3 **Drafting note: Proposed Subtitle V is created to logically organize provisions**
4 **relating to wind energy, solar energy, geothermal energy, nuclear energy, and other**
5 **sources of energy not related to coal, minerals, or gas and oil. Proposed Subtitle V**
6 **contains six chapters: Chapter 17, Other Sources of Energy Generally; Chapter 18,**
7 **Wind Energy; Chapter 19, Solar Energy; Chapter 20, Geothermal Energy; Chapter 21,**
8 **Nuclear Energy; and Chapter 22, Uranium Mining.**

9 CHAPTER 17.

10 OTHER SOURCES OF ENERGY GENERALLY.

11 **Drafting note: Proposed Chapter 17 is composed of a new Article 1 with chapter-**
12 **wide definitions and a portion of existing Chapter 26 (§ 45.1-390 et seq.) of Title 45.1,**
13 **and Chapters 1 (§ 67-100 et seq.), 2 (§ 67-200 et seq.), 6 (§ 67-600 et seq.), and 16 (§ 67-**
14 **1600 et seq.) of Title 67 as Articles 2 through 6, respectively. The proposed articles are as**
15 **follows: Article 1, General Provisions; Article 2, Energy and Operational Efficiency**
16 **Performance-Based Contracting Act; Article 3, Energy Policy of the Commonwealth;**
17 **Article 4, Virginia Energy Plan; Article 5, Virginia Coastal Energy Research**
18 **Consortium; and Article 6, Southwest Virginia Energy Research and Development**
19 **Authority.**

20 Article 1.

21 General Provisions.

22 **Drafting note: Proposed Article 1 is created to logically organize general**
23 **provisions applicable to proposed Chapter 17.**

24 ~~§ 67-200~~ 45.2-xxx. Definitions.

25 As used in this ~~title~~ chapter, unless the context requires a different meaning:

26 "Consortium" means the Virginia Coastal Energy Research Consortium established
27 pursuant to Article 5 (§ 45.2-xxx [existing § 67-600] et seq.).

28 ~~"Department" means the Department of Mines, Minerals and Energy.~~

29 "Division" means the Division of Energy of the Department of Mines, Minerals and
30 Energy.

31 "Plan" means the Virginia Energy Plan prepared pursuant to ~~this chapter, including~~
32 ~~any updates thereto~~ [Article 4 \(§ 45.2-xxx \[existing § 67-200\] et seq.\)](#).

33 **Drafting note: Existing § 67-200 is relocated from Title 67 to consolidate**
34 **definitions in proposed Chapter 17. The definition of "Consortium" is added and the**
35 **definition of "Department" is stricken as unnecessary because it is defined for the title**
36 **in proposed § 45.2-xxx [first section in proposed Chapter 1]. In the definition of "Plan,"**
37 **a citation is added and the unnecessary phrase "including any updates thereto" is**
38 **stricken.**

39 ~~CHAPTER 26.~~

40 ~~ENERGY DIVISION, ETC.~~

41 **Drafting note: The first section of existing Chapter 26 is relocated to this**
42 **proposed article, while the remaining two sections of existing Chapter 26 are relocated**
43 **to proposed Chapter 19.**

44 § ~~45.1-390~~ [45.2-xxx](#). Division of Energy established; findings and policy; powers and
45 duties.

46 A. The General Assembly finds that because energy-related issues continually
47 confront the Commonwealth, and many separate agencies are involved in providing energy
48 programs and services, ~~there exists~~ a need exists for a state organization responsible for (i)
49 coordinating ~~Virginia's~~ the Commonwealth's energy programs and (ii) ensuring ~~Virginia's~~ the
50 Commonwealth's commitment to the development of renewable and indigenous energy
51 sources, ~~as well as~~ and the efficient use of traditional energy resources. In accordance with
52 this need, the Division of Energy is ~~created~~ established in the Department ~~of Mines, Minerals~~
53 ~~and Energy~~. The Director ~~shall have~~ has the immediate authority to coordinate the
54 development and implementation of energy policy in ~~Virginia~~ the Commonwealth.

55 B. The Division shall coordinate the energy-related activities of the various state
56 agencies and advise the Governor on energy issues that arise at the local, state, and national

57 levels. All state agencies and institutions shall cooperate fully with the Division to assist in
58 the proper execution of the duties assigned by this section.

59 C. In addition, the Division is authorized to make and enter into all contracts and
60 agreements necessary or incidental to the performance of its duties or the execution of its
61 powers, including the implementation of energy information and conservation plans and
62 programs.

63 D. The Division shall:

64 1. Consult with ~~any or all~~ state agencies and institutions concerning energy-related
65 activities or policies as needed for the proper execution of the duties assigned to the Division
66 by this section;

67 2. ~~Maintain~~ Serve as the Commonwealth's liaison with appropriate agencies of the
68 federal government ~~on~~ concerning the activities of the federal government related to energy
69 production, consumption, and transportation and energy resource management in general;

70 3. Provide services to encourage efforts by and among Virginia businesses, industries,
71 utilities, academic institutions, state and local governments, and private institutions to develop
72 energy resources and energy conservation programs ~~and energy resources~~;

73 4. In consultation with the State Corporation Commission, the Department of
74 Environmental Quality, and the Virginia Center for Coal and Energy Research, prepare the
75 Virginia Energy Plan pursuant to § ~~67-201~~ 45.2-xxx;

76 5. Observe the energy-related activities of state agencies and advise ~~these~~ such
77 agencies in order to encourage conformity with established energy policy; and

78 6. Serve, pursuant to § 58.1-3660, as the state certifying authority for solar energy
79 projects and for the production of coal, oil, and gas, including gas, natural gas, and coalbed
80 methane gas.

81 **Drafting note: Technical changes are made, including the addition of subsection**
82 **and clause designations, and language is updated for modern usage.**

83 ~~§ 45.1-390.1. Repealed.~~

84 **Drafting note: Repealed by Acts 1993, c. 274.**

85 ~~§ 45.1-392. Repealed.~~

86 **Drafting note: Repealed by Acts 2011, cc. 815 and 864, cl. 2, effective July 1,**
87 **2013.**

88 ~~§ 45.1-393. Repealed.~~

89 **Drafting note: Repealed by Acts 2011, cc. 815 and 864, cl. 3, effective July 1,**
90 **2017.**

91 ~~§ 45.1-394. Repealed.~~

92 **Drafting note: Repealed by Acts 2011, cc. 815 and 864, cl. 3, effective July 1,**
93 **2017.**

94 ~~CHAPTER 6.1.~~

95 ~~ENERGY AND OPERATIONAL EFFICIENCY PERFORMANCE-BASED~~

96 ~~CONTRACTING ACT.~~

97 Article 2.

98 Energy and Operational Efficiency Performance-Based Contracting Act.

99 **Drafting note: Existing Chapter 6.1 of Title 11, comprising the Energy and**
100 **Operational Efficiency Performance-Based Contracting Act, is relocated as proposed**
101 **Article 2 of Chapter 17.**

102 ~~§ 11-34.1. Legislative intent.~~

103 ~~The General Assembly finds that investment in energy conservation measures and~~
104 ~~facility technology infrastructure upgrades and modernization in facilities owned by state and~~
105 ~~local government can reduce the amount of energy consumed, reduce long term operational~~
106 ~~costs and produce immediate and long term savings. It is the policy of the Commonwealth to~~
107 ~~encourage public bodies to invest in energy conservation measures and facility technology~~
108 ~~infrastructure upgrades that reduce energy consumption, produce a cost savings, and improve~~
109 ~~the quality of indoor air in facilities, and when economically feasible, operate, maintain, or~~
110 ~~renovate facilities in such a manner so as to minimize energy consumption and reduce~~
111 ~~operational costs associated with facility technology infrastructure. Furthermore, state aid and~~
112 ~~other amounts appropriated for distribution to public bodies shall not be reduced as a result of~~

113 ~~energy and operational savings realized from a guaranteed savings contract or a lease~~
114 ~~purchase agreement for the purchase and installation of energy conservation and facility~~
115 ~~technology infrastructure upgrades and modernization.~~

116 **Drafting note: The statement of legislative intent for existing Chapter 6.1 of Title**
117 **11 is stricken in accordance with the Code Commission's policy that purpose statements**
118 **do not have general and permanent application and thus are not to be included in the**
119 **Code.**

120 § ~~11-34.2~~ 45.2-xxx. Definitions.

121 As used in this ~~chapter~~ article:

122 "Contracting entity" means any public body as defined in § 2.2-4301.

123 "Energy conservation measures ~~and facility technology infrastructure~~" means the use
124 of methods, and techniques, the application of knowledge, or the installation of devices,
125 including an alteration or betterment ~~to~~ of an existing facility, that ~~reduce~~ reduces energy
126 consumption or operating costs, and includes, ~~but is not limited to~~:

127 1. Insulation of the facility structure and systems within the facility.

128 2. ~~Storm~~ Installation of storm windows and doors, caulking or weatherstripping,
129 multiglazed windows and doors, heat-absorbing, or heat-reflective, glazed and coated window
130 and door systems, or additional glazing, or reductions in glass area, ~~and or~~ other window and
131 door system modifications that reduce energy consumption.

132 3. ~~Automatic~~ Installation of automatic energy control systems, including related
133 software. ~~Required;~~ required network communication wiring, computer devices, wiring, and
134 support services. ~~Additionally, designing;~~ or the design and ~~implementing~~ implementation of
135 major building technology infrastructure with operational improvements.

136 4. ~~Heating~~ Modification or replacement of heating, ventilating, or air-conditioning
137 ~~system modifications or replacements~~ systems.

138 5. Replacement or ~~modifications~~ modification of lighting fixtures to increase the
139 energy efficiency of the lighting system ~~which~~. Such replacement or modification shall, at a

140 minimum, ~~shall~~ conform to the applicable provisions of the Uniform Statewide Building Code
141 (§ 36-97 et seq.).

142 6. ~~Energy~~ Installation of energy recovery systems.

143 7. ~~Cogeneration~~ Installation of cogeneration systems that produce, in addition to
144 electricity, steam or ~~forms another form~~ of energy, such as heat, ~~as well as electricity~~, for use
145 primarily within a facility or complex of facilities.

146 8. ~~Energy~~ Installation of energy conservation measures that provide long-term
147 operating cost reductions and significantly reduce the BTUs consumed.

148 9. ~~Building~~ Installation of building technology infrastructure measures that provide
149 long-term operating cost reductions and reduce related operational costs.

150 10. ~~Renewable~~ Installation of an energy ~~systems~~ system, such as solar, biomass, ~~and or~~
151 wind.

152 11. ~~Devices~~ Installation of devices that reduce water consumption or sewer charges.

153 "Energy cost savings" means a measured reduction in fuel, energy, or operation and
154 maintenance costs created from the implementation of one or more energy conservation
155 measures when compared with an established baseline for previous fuel, energy, or operation
156 and maintenance costs. When calculating "energy cost savings" attributable to the services
157 performed or equipment installed pursuant to a performance-based efficiency contract,
158 maintenance savings shall be included.

159 "Energy performance-based contract" means a contract for the evaluation,
160 recommendation, and implementation of energy conservation measures ~~and facility~~
161 ~~technology infrastructure upgrades and modernization~~ that includes, at a minimum:

162 1. The design and installation of equipment to implement one or more ~~of~~ such
163 measures, and, if applicable, the operation and maintenance of such measures.

164 2. The amount of any actual annual savings. ~~This~~ Such amount ~~must~~ shall meet or
165 exceed the total annual contract payments made by the contracting entity for such contract.

166 3. ~~Financing~~ The financing charges to be incurred by the contracting entity for such
167 contract.

168 "Maintenance savings" means the operating expenses eliminated and future capital
169 replacement expenditures avoided as a result of new equipment installed or services
170 performed by the performance contractor.

171 "Performance guarantee bond" means ~~for each year of the energy program, the energy~~
172 ~~performance contractor shall provide a~~ the performance bond provided by the energy
173 performance contractor for each year of the energy program in an amount equal to, but no
174 greater than, the guaranteed measured and verifiable annual savings set forth in the program.

175 **Drafting note: The defined term "energy conservation measures and facility**
176 **technology infrastructure," also rendered inconsistently within existing Chapter 6.1 of**
177 **Title 11 as "energy conservation measures and facility technology infrastructure**
178 **measures," is shortened to "energy conservation measures" for clarity and consistency.**
179 **In the second definition, "but is not limited to" is removed following the term**
180 **"includes" on the basis of § 1-218, which states that throughout the Code "'Includes'**
181 **means includes, but not limited to." Changes are made pursuant to § 1-227, which states**
182 **that throughout the Code any word used in the singular includes the plural and vice**
183 **versa. Technical changes are made and language is updated for modern usage.**

184 § ~~11-34.3~~ 45.2-xxx. Energy Performance-Based Contract Procedures; required
185 contract provisions.

186 A. Any contracting entity may enter into an energy performance-based contract with
187 an energy performance contractor to significantly reduce (i) energy costs to a level established
188 by the public body or (ii) operating costs of a facility through one or more energy
189 conservation or operational efficiency measures. For the purposes of this ~~chapter~~ article,
190 energy conservation or operational efficiency measures shall not include roof replacement
191 projects.

192 B. The energy performance contractor shall be selected through competitive sealed
193 bidding or competitive negotiation as set forth in § 2.2-4302.1 or 2.2-4302.2. The evaluation
194 of the request for proposal shall analyze the estimates of all costs of installation, maintenance,
195 repairs, debt service, ~~post installation~~ post-installation project monitoring, and reporting.

196 Notwithstanding any other provision of law, any contracting entity may purchase energy
197 conservation or operational efficiency measures under an energy performance-based contract
198 entered into by another contracting entity pursuant to this ~~chapter~~ article even if it did not
199 participate in the request for proposals if the request for proposals specified that the
200 procurement was being conducted on behalf of other contracting entities.

201 C. Before entering into a contract for energy conservation measures ~~and facility~~
202 ~~technology infrastructure upgrades and modernization measures~~, the contracting entity shall
203 require the performance contractor to provide a payment and performance bond relating to the
204 installation of energy conservation measures ~~and facility technology infrastructure upgrades~~
205 ~~and modernization measures~~ in ~~the~~ an amount the contracting entity finds reasonable and
206 necessary to protect its interests.

207 D. Prior to the design and installation of ~~the~~ any energy conservation ~~measure~~
208 measures, the contracting entity shall obtain from the energy performance contractor a report
209 disclosing all costs associated with ~~the~~ such energy conservation ~~measure~~ measures and
210 providing an estimate of the amount of the energy cost savings. After reviewing the report, the
211 contracting entity may enter into an energy performance-based contract if it finds (i) the
212 amount the entity would spend on the energy conservation measures ~~and facility and~~
213 ~~technology infrastructure upgrades and modernization measures~~ recommended in the report
214 will not exceed the amount to be saved in energy and operation costs more than 20 years from
215 the date of installation, based on life-cycle costing calculations, if the recommendations in the
216 report were followed and (ii) the energy performance contractor provides a written guarantee
217 that the energy and operating cost savings will meet or exceed the costs of the system. The
218 contract may provide for payments over a period ~~of time~~ not to exceed 20 years.

219 E. The term of any energy performance-based contract shall expire at the end of each
220 fiscal year but may be renewed annually up to 20 years, subject to the contracting entity
221 making sufficient annual appropriations based upon continued realized cost savings. Such
222 ~~contracts~~ contract shall stipulate that the agreement does not constitute a debt, liability, or
223 obligation of the contracting entity, or a pledge of the faith and credit of the contracting entity.

224 Such contract may also provide capital contributions for the purchase and installation of
225 energy conservation ~~and facility and technology infrastructure upgrades and modernization~~
226 measures that cannot be totally funded by the energy and operational savings.

227 F. An energy performance-based contract shall include the following provisions:

228 1. A guarantee by the energy performance contractor that annual energy and
229 operational cost savings will meet or exceed the amortized cost of energy conservation
230 measures. The guaranteed energy savings contract shall include a written guarantee of the
231 qualified provider that either the energy [savings](#) or operational cost savings, or both, will meet
232 or exceed within 20 years the costs of the energy and operational savings measures. The
233 qualified provider shall reimburse the contracting entity for any shortfall of guaranteed energy
234 savings projected in the contract.

235 2. A requirement that the energy performance contractor to whom the contract is
236 awarded provide a 100 percent performance guarantee bond to the contracting entity for the
237 installation and faithful performance of the installed energy savings measures as outlined in
238 the contract document.

239 3. A requirement that the energy performance contractor provide to the contracting
240 entity an annual reconciliation of the guaranteed energy cost savings. The energy performance
241 contractor shall be liable for any annual savings shortfall that may occur.

242 G. The Department ~~of Mines, Minerals and Energy (the Department)~~ shall make a
243 reasonable effort, as long as workload permits, to:

244 1. Provide general advice, upon request, to local governments ~~that wish to consider~~
245 [considering](#) pursuit of an energy performance-based contract pursuant to this section;

246 2. Annually compile a list of performance-based contracts entered into by local
247 governments of which the Department may become aware.

248 **Drafting note: Technical changes are made, including a change pursuant to § 1-**
249 **227, which states that throughout the Code any word used in the singular includes the**
250 **plural and vice versa. Language is updated for modern usage and clarity.**

251 § ~~11-34.4~~ [45.2-xxx](#). Application of ~~chapter~~ [article](#).

252 The provisions of this ~~chapter~~ article shall not apply to any new construction ~~projects~~
253 project undertaken by a public ~~bodies~~ body.

254 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
255 **227, which states that throughout the Code any word used in the singular includes the**
256 **plural and vice versa.**

257 ~~CHAPTER 1.~~

258 ~~ENERGY POLICY OF THE COMMONWEALTH.~~

259 Article 3.

260 Energy Policy of the Commonwealth.

261 **Drafting note: Existing Chapter 1 of Title 67, relating to the energy policy of the**
262 **Commonwealth, is relocated as proposed Article 3 of Chapter 17.**

263 § ~~67-100~~ 45.2-xxx. Legislative findings.

264 The General Assembly hereby finds that:

265 1. Energy is essential to the health, safety, and welfare of the people of ~~this~~ the
266 Commonwealth and to the Commonwealth's economy;

267 2. The ~~state~~ government of the Commonwealth should facilitate the availability and
268 delivery of reliable and adequate supplies of energy to industrial, commercial, and residential
269 users at reasonable costs ~~such~~ so that ~~these~~ such users and the Commonwealth's economy are
270 able to be productive;

271 3. The Commonwealth would benefit from articulating clear objectives pertaining to
272 energy issues, adopting an energy policy that advances ~~these~~ such objectives, and establishing
273 a procedure for measuring the implementation of ~~these policies~~ such policy;

274 4. Climate change is an urgent and pressing challenge for ~~Virginia~~ the
275 Commonwealth. Swift decarbonization and a transition to clean energy are required to meet
276 the urgency of the challenge; and

277 5. The Commonwealth will benefit from being a leader in deploying a low-carbon
278 energy economy.

279 **Drafting note: Technical changes are made and language is updated for modern**
280 **usage.**

281 § ~~67-101~~ 45.2-xxx. Energy objectives.

282 A. The Commonwealth recognizes that each of the following objectives pertaining to
283 energy issues will advance the health, welfare, and safety of the residents of the
284 Commonwealth:

285 1. Ensuring an adequate energy supply and a ~~Virginia-based~~ Commonwealth-based
286 energy production capacity;

287 2. Minimizing the Commonwealth's long-term exposure to volatility and increases in
288 world energy prices through greater energy independence;

289 3. Ensuring the availability of reliable energy at costs that are reasonable and in
290 quantities that will support the Commonwealth's economy;

291 4. Managing the rate of consumption of existing energy resources in relation to
292 economic growth;

293 5. Establishing sufficient supply and delivery infrastructure to enable widespread
294 deployment of distributed energy resources and to maintain reliable energy availability in the
295 event of a disruption occurring ~~to~~ in a portion of the Commonwealth's energy matrix;

296 6. Maximizing energy efficiency programs, ~~which~~ that are the lowest-cost energy
297 option to reduce greenhouse gas emissions, in order to produce electricity cost savings and ~~to~~
298 create jobs and economic opportunity from the energy efficiency service sector;

299 7. Facilitating conservation;

300 8. Optimizing intrastate and interstate use of energy supply and delivery to maximize
301 energy availability, reliability, and price opportunities to the benefit of all user classes and the
302 Commonwealth's economy ~~as stated in~~ pursuant to subdivision 2 of § ~~67-100~~ 45.2-xxx;

303 9. Increasing ~~Virginia's~~ the Commonwealth's reliance on sources of energy that,
304 compared to traditional energy resources, are less polluting of the Commonwealth's air and
305 waters;

306 10. Establishing greenhouse gas emissions reduction goals across ~~Virginia's~~ the
307 Commonwealth's economy sufficient to reach net-zero emissions by 2045, including in the
308 electric power, transportation, industrial, agricultural, building, and infrastructure sectors;

309 11. Requiring that pathways to net-zero greenhouse gas emissions be determined
310 based on technical, policy, and economic analysis to maximize their effectiveness, optimize
311 ~~Virginia's~~ the Commonwealth's economic development, and create quality jobs while
312 minimizing adverse impacts on public health, affected communities, and the environment;

313 12. Developing energy resources necessary to produce 30 percent of ~~Virginia's~~ the
314 Commonwealth's electricity from renewable energy sources by 2030 and 100 percent of
315 ~~Virginia's~~ the Commonwealth's electricity from carbon-free sources by 2040;

316 13. Enabling widespread integration of distributed energy resources into the grid,
317 including storage and carbon-free generation, such as rooftop solar installations as defined in
318 § 56-576;

319 14. Removing impediments to the use of carbon-free energy resources located within
320 and outside the Commonwealth, including distributed renewable energy generation resources,
321 nuclear power plants, and generation resources that employ carbon capture and sequestration;

322 15. Mitigating the negative impacts of climate change and the energy transition on
323 disadvantaged communities and prioritizing investment in ~~these~~ such communities;

324 16. Developing the carbon-free energy resources required to fully decarbonize the
325 electric power supply of the Commonwealth, including deployment of 30 percent ~~renewables~~
326 renewable energy sources by 2030 and realizing 100 percent carbon-free electric power by
327 2040;

328 17. Increasing ~~Virginia's~~ the Commonwealth's reliance on and production of
329 sustainably produced biofuels made from traditional agricultural crops and other feedstocks,
330 such as winter cover crops, warm season grasses, fast-growing trees, algae, or other suitable
331 feedstocks grown in the Commonwealth that will create jobs and income, produce clean-
332 burning fuels that will help to improve air quality, and provide the new markets for ~~Virginia's~~
333 the Commonwealth's silvicultural and agricultural products needed to preserve farm

334 employment, conserve farmland and forestland, and increase implementation of silvicultural
335 and agricultural best management practices to protect water quality; and

336 18. Ensuring that decision making is transparent and includes opportunities for full
337 participation by the public.

338 B. Except as provided in subsection D of § 56-585.1, nothing in this section shall be
339 deemed to abrogate or modify in any way the provisions of the Virginia Electric Utility
340 Regulation Act (§ 56-576 et seq.).

341 **Drafting note: The jargon term "renewables" in subdivision A 16 is replaced**
342 **with "renewable energy sources," the term used in subdivision A 1 of the following**
343 **section. Technical changes are made, including the addition of subsection designations**
344 **and the replacement of "Virginia" with "the Commonwealth" when appropriate, and**
345 **language is updated for modern usage.**

346 § ~~67-102~~ 45.2-xxx. Commonwealth Energy Policy.

347 A. To achieve the objectives enumerated in § ~~67-101~~ 45.2-xxx, it ~~shall be~~ is the policy
348 of the Commonwealth to:

349 1. Support research and development of, and promote the use of, renewable energy
350 sources;

351 2. Ensure that the combination of energy supplies and energy-saving systems ~~are~~ is
352 sufficient to support the demands of economic growth;

353 3. Promote cost-effective conservation of energy and fuel supplies;

354 4. Ensure the adequate supply of natural gas necessary to ensure the reliability of the
355 electricity supply and the needs of businesses during the transition to renewable energy.;

356 5. Promote the generation of electricity through technologies that do not contribute to
357 greenhouse gases and global warming;

358 6. Promote the use of motor vehicles that utilize alternate fuels and are highly energy
359 efficient;

360 7. Support efforts to reduce the demand for imported petroleum by developing
361 alternative technologies, including ~~but not limited to~~ the production of synthetic and

362 hydrogen-based fuels, and the infrastructure required for the widespread implementation of
363 such technologies;

364 8. Ensure that development of new, or expansion of existing, energy resources or
365 facilities does not have a disproportionate adverse impact on economically disadvantaged or
366 minority communities;

367 9. Establish greenhouse gas emissions reduction standards across all sectors of
368 ~~Virginia's~~ the Commonwealth's economy that target net-zero carbon emissions ~~carbon~~ by
369 2045;

370 10. Enact mandatory clean energy standards and overall strategies for reaching net-
371 zero carbon in the electric power sector by 2040;

372 11. Equitably incorporate requirements for technical, policy, and economic analyses
373 and assessments that recognize the unique attributes of different energy resources and
374 delivery systems to identify pathways to net-zero carbon that maximize ~~Virginia's~~ the
375 Commonwealth's energy reliability and resilience, economic development, and jobs;

376 12. Minimize the negative impacts of climate change and the energy transition on
377 economically disadvantaged or minority communities and prioritize investment in ~~these~~ such
378 areas; and

379 13. Support the distributed generation of renewable electricity by:

380 a. Encouraging private sector investments in distributed renewable energy;

381 b. Increasing the security of the electricity grid by supporting distributed renewable
382 energy projects with the potential to supply electric energy to critical facilities during a
383 widespread power outage; and

384 c. Augmenting the exercise of private property rights by landowners desiring to
385 generate their own energy from renewable energy sources on their lands.

386 B. The elements of the policy set forth in subsection A shall be referred to collectively
387 in this title as the Commonwealth Energy Policy.

388 C. All agencies and political subdivisions of the Commonwealth, in taking
389 discretionary action with regard to energy issues, shall recognize the elements of the

390 Commonwealth Energy Policy and where appropriate, shall act in a manner consistent
391 therewith.

392 D. The Commonwealth Energy Policy is intended to provide guidance to the agencies
393 and political subdivisions of the Commonwealth in taking discretionary action with regard to
394 energy issues, and shall not be construed to amend, repeal, or override any contrary provision
395 of applicable law. ~~The~~ No failure or refusal of any person to recognize the elements of the
396 Commonwealth Energy Policy, to act in a manner consistent with the Commonwealth Energy
397 Policy, or to take any other action whatsoever, shall ~~not~~ create any right, action, or cause of
398 action or provide standing for any person to challenge the action of the Commonwealth or any
399 of its agencies or political subdivisions.

400 **Drafting note: In subdivision A 7, the phrase "but not limited to" is removed**
401 **pursuant to § 1-218, which states that throughout the Code "'Includes' means includes,**
402 **but not limited to." In subdivision A 9, the unconventional phrase "net-zero emissions**
403 **carbon" is changed to "net-zero carbon emissions" for clarity. Language is updated for**
404 **modern usage. The prohibitory language at the end of subsection D is recast in**
405 **affirmative form consistent with current drafting practice.**

406 § ~~67-103~~ 45.2-xxx. Role of local governments in achieving objectives of the
407 Commonwealth Energy Policy.

408 A. In the development of any local ordinance addressing the siting of renewable
409 energy facilities that generate electricity from wind or solar resources, ~~the~~ such ordinance
410 shall:

411 1. Be consistent with the provisions of the Commonwealth Energy Policy pursuant to
412 subsection C of § ~~67-102~~ 45.2-xxx;

413 2. Provide reasonable criteria to be addressed in the siting of any renewable energy
414 facility that generates electricity from wind ~~and~~ or solar resources. ~~The~~ Such criteria shall
415 provide for the protection of the locality in a manner consistent with the goals of the
416 Commonwealth to promote the generation of energy from wind and solar resources; and

417 3. Include provisions establishing reasonable requirements upon the siting of any such
418 renewable energy facility, including provisions limiting noise, requiring buffer areas and
419 setbacks, and addressing generation facility decommissioning.

420 B. Any measures required by ~~the~~ such ordinance pursuant to subsection A shall be
421 consistent with the locality's existing ordinances.

422 **Drafting note: Technical changes are made, including the addition of subsection**
423 **designations, and language is updated for clarity.**

424 § ~~67-104~~ 45.2-xxx. Nuclear energy; considered a clean energy source.

425 For the purposes of the Commonwealth Energy Policy as set out in § ~~67-102~~ 45.2-xxx,
426 in any clean energy initiative or carbon-free energy initiative undertaken, overseen, regulated,
427 or permitted by the Department, nuclear energy shall be considered to be a clean energy
428 source.

429 **Drafting note: Technical change.**

430 ~~CHAPTER 2.~~

431 ~~VIRGINIA ENERGY PLAN.~~

432 Article 4.

433 Virginia Energy Plan.

434 **Drafting note: Existing Chapter 2 of Title 67, relating to the Virginia Energy**
435 **Plan, is relocated as proposed Article 4 of Chapter 17. Existing § 67-200 is relocated as**
436 **the definitions section at the beginning of the chapter.**

437 § ~~67-201~~ 45.2-xxx. Development of the Virginia Energy Plan.

438 A. The Division, in consultation with the State Corporation Commission, the
439 Department of Environmental Quality, the Clean Energy Advisory Board, solar, wind, and
440 energy efficiency sectors, and a stakeholder group that ~~shall include~~ includes representatives
441 of consumer, environmental, manufacturing, forestry, and agricultural organizations and
442 natural gas and electric utilities, shall prepare a comprehensive Virginia Energy Plan (the
443 Plan) that identifies actions over a 10-year period consistent with the goal of the
444 Commonwealth Energy Policy set forth in § ~~67-102~~ 45.2-xxx to achieve, no later than 2045, a

445 net-zero carbon energy economy for all sectors, including the electricity, transportation,
446 building, agricultural, and industrial sectors. The Plan shall propose actions, consistent with
447 the objectives enumerated in § ~~67-101~~ 45.2-xxx, that will implement the Commonwealth
448 Energy Policy set forth in § ~~67-102~~ 45.2-xxx.

449 B. In addition, the Plan shall include:

450 1. Projections of energy consumption in the Commonwealth, including the use of fuel
451 sources and costs of electricity, natural gas, gasoline, coal, renewable resources, and other
452 forms of non-greenhouse-gas-generating energy resources, such as nuclear power, used in the
453 Commonwealth;

454 2. An analysis of the adequacy of electricity generation, transmission, and distribution
455 resources in the Commonwealth for the natural gas and electric industries, and how
456 distributed energy resources and regional generation, transmission, and distribution resources
457 affect the Commonwealth;

458 3. An analysis of siting requirements for electric generation resources and natural gas
459 and electric transmission and distribution resources, including an assessment of state and local
460 impediments to expanded use of distributed resources and recommendations to reduce or
461 eliminate ~~these~~ such impediments;

462 4. An analysis of fuel diversity for electricity generation, recognizing the importance
463 of flexibility in meeting future capacity needs;

464 5. An analysis of the efficient use of energy resources and conservation initiatives;

465 6. An analysis of how ~~these~~ such Virginia-specific issues relate to regional initiatives
466 to ~~assure~~ ensure the adequacy of fuel production, generation, transmission, and distribution
467 assets;

468 7. An analysis of the siting of energy resource development, refining ~~or~~, and
469 transmission facilities to identify any disproportionate adverse impact of such activities on
470 economically disadvantaged or minority communities;

471 8. With regard to any regulations proposed or promulgated by the U.S. Environmental
472 Protection Agency to reduce carbon dioxide emissions from fossil fuel-fired electric

473 generating units under § 111(d) of the federal Clean Air Act, 42 U.S.C. § 7411 (d), an
474 analysis of (i) the costs to and benefits for energy producers and electric utility customers; (ii)
475 the effect on energy markets and reliability; and (iii) the commercial availability of
476 technology required to comply with such regulations;

477 9. An inventory of greenhouse gas emissions using a method determined by the
478 Department of Environmental Quality for the four years prior to the issuance of the Plan; and

479 10. Recommendations, based on the analyses completed under subdivisions 1 through
480 9, for legislative, regulatory, and other public and private actions to implement the elements
481 of the Commonwealth Energy Policy.

482 C. In preparing the Plan, the Division and other agencies involved in the planning
483 process shall utilize state geographic information systems, to the extent deemed practicable, to
484 assess how recommendations in the Plan may affect pristine natural areas and other
485 significant onshore natural resources. Effective October 1, 2024, interim updates on the Plan
486 shall also contain projections for greenhouse gas emissions that would result from
487 implementation of the Plan's recommendations.

488 D. In preparing the Plan, the Division and other agencies involved in the planning
489 process shall develop a system for ~~ascribing~~ assigning numerical scores to ~~parcels~~ any parcel
490 of real property based on the extent to which ~~the parcels are~~ such parcel is suitable for the
491 siting of a wind energy facility or solar energy facility. For a wind energy ~~facilities~~ facility,
492 the scoring system shall address the wind velocity, sustained velocity, and turbulence,
493 ~~proximity to electric power transmission systems, potential impacts to natural and historic~~
494 ~~resources and to economically disadvantaged or minority communities, and compatibility~~
495 ~~with the local land use plan.~~ For either a wind energy facility or a solar energy ~~facilities~~
496 facility, the scoring system shall address the parcel's proximity to electric power transmission
497 lines or systems, potential impacts of such a facility to natural and historic resources and to
498 economically disadvantaged or minority communities, and compatibility with the local land
499 use plan. The system developed pursuant to this section shall allow the suitability of the
500 parcel for the siting of a wind energy ~~facility~~ or solar energy facility to be compared to the

501 suitability of other parcels so scored, and shall be based on a scale that allows the suitability
502 of the parcel for the siting of ~~a such an energy~~ a facility to be measured against the
503 hypothetical score of an ideal location for such a facility.

504 E. ~~After July 1, 2007, upon~~ Upon receipt by the Division of a recommendation from
505 the Department of General Services, a local governing body, or the parcel's owner that a
506 parcel of real property is a potentially suitable location for a wind energy facility or solar
507 energy facility, the Division shall analyze the suitability of the parcel for the location of such
508 a facility. In conducting its analysis, the Division shall ascribe a numerical score to the parcel
509 using the scoring system developed pursuant to subsection D.

510 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
511 **227, which states that throughout the Code any word used in the singular includes the**
512 **plural and vice versa. Duplicative language is removed from subsection D. An apparent**
513 **error is corrected by removing the surplus "a" from the last sentence in subsection D.**
514 **The obsolete 2007 date is stricken from subsection E.**

515 § ~~67-202~~ 45.2-xxx. Schedule for the Plan.

516 A. The Division shall complete the Plan ~~by July 1, 2007~~.

517 B. Prior to the completion of the Plan and ~~updates~~ each update thereof, the Division
518 shall present drafts to, and consult with, the Virginia Coal and Energy Commission
519 established pursuant to Chapter 25 (§ 30-188 et seq.) of Title 30 and the Commission on
520 Electric Utility Regulation established pursuant to Chapter 31 (§ 30-201 et seq.) of Title 30.

521 C. The Plan shall be updated by the Division and submitted as provided in § ~~67-203~~
522 45.2-xxx by ~~July 1, 2010~~, October 1, 2014, and every fourth October 1 thereafter. In addition,
523 the Division shall provide interim updates on the Plan by October 1 of the third year of each
524 Governor's administration. Updated reports shall reassess goals for energy conservation based
525 on progress to date in meeting the goals in the previous ~~plan~~ Plan and lessons learned from
526 attempts to meet such goals.

527 D. Beginning with the Plan update in 2014, the Division shall include a section ~~to set~~
528 setting forth energy policy positions relevant to any potential regulations proposed or

529 promulgated by the State Air Pollution Control Board to reduce carbon dioxide emissions
530 from fossil fuel-fired electric generating units under § 111(d) of the [federal](#) Clean Air Act, 42
531 U.S.C. § 7411(d). In ~~this~~ [such](#) section of the Plan, the Division shall address policy options
532 for establishing separate standards of performance pursuant to § 111(d) of the [federal](#) Clean
533 Air Act, 42 U.S.C. § 7411(d), for carbon dioxide emissions from existing fossil fuel-fired
534 electric generating units to promote the Plan's overall goal of fuel diversity as follows:

535 1. The Plan shall address policy options for establishing the standards of performance
536 for existing coal-fired electric generating units, including ~~but not limited to~~ the following
537 factors:

538 a. The most suitable system of emission reduction that (i) takes into consideration (a)
539 the cost and benefit of achieving such reduction, (b) any non-air quality health and
540 environmental impacts, and (c) the energy requirements of the Commonwealth and (ii) has
541 been adequately demonstrated for coal-fired electric generating units that are subject to the
542 standard of performance;

543 b. Reductions in emissions of carbon dioxide that can be achieved through measures
544 reasonably undertaken at each coal-fired electric generating unit; and

545 c. Increased efficiencies and other measures that can be implemented at each coal-
546 fired electric generating unit to reduce carbon dioxide emissions from the unit without
547 converting from coal to other fuels, co-firing other fuels with coal, or limiting the utilization
548 of the unit.

549 2. The Plan shall also address policy options for establishing the standards of
550 performance for existing gas-fired electric generating units, including ~~but not limited to~~ the
551 following factors:

552 a. The application of the criteria specified in subdivisions 1 a and b to natural gas-fired
553 electric generating units; instead of to coal-fired electric generating units; and

554 b. Increased efficiencies and other measures that can be reasonably implemented at the
555 unit to reduce carbon dioxide emissions from the unit without switching from natural gas to
556 other lower-carbon fuels or limiting the utilization of the unit.

557 3. The Plan shall examine policy options for state regulatory action to adopt less
558 stringent standards or longer compliance schedules than those provided for in applicable
559 federal rules or guidelines based on analysis of the following:

560 a. Consumer impacts, including any disproportionate impacts of energy price increases
561 on lower-income populations;

562 b. Unreasonable cost of reducing emissions resulting from plant age, location, or basic
563 process design;

564 c. Physical difficulties with or impossibility of implementing emission reduction
565 measures;

566 d. The absolute cost of applying the performance standard to the unit;

567 e. The expected remaining useful life of the unit;

568 f. The economic impacts of closing the unit, including expected job losses, if the unit
569 is unable to comply with the performance standard; and

570 g. Any other factors specific to the unit that make application of a less stringent
571 standard or longer compliance schedule more reasonable.

572 4. The Plan shall identify options, to the maximum extent permissible, for any
573 federally required regulation of carbon dioxide emissions from existing fossil fuel-fired
574 electric generating units, and regulatory mechanisms that provide flexibility in complying
575 with such standards, including the averaging of emissions, emissions trading, or other
576 alternative implementation measures that are determined to further the interests of the
577 Commonwealth and its citizens.

578 **Drafting note: References to Code sections establishing the Virginia Coal and**
579 **Energy Commission and the Commission on Electric Utility Regulation are added.**
580 **Obsolete date references are deleted in subsections A and B. In subdivision D 2, "but not**
581 **limited to" is removed following the term "including" on the basis of § 1-218, which**
582 **states that throughout the Code "'Includes' means includes, but not limited to." Other**
583 **technical changes are made, including changes pursuant to § 1-227, which states that**

584 throughout the Code any word used in the singular includes the plural and vice versa.
585 Language is updated for clarity.

586 § ~~67-202.1~~ [45.2-xxx](#). Annual reporting by investor-owned public utilities.

587 Each investor-owned public utility providing electric service in the Commonwealth
588 shall prepare an annual report disclosing its efforts to conserve energy, including ~~but not~~
589 ~~limited to~~ (i) its implementation of customer demand-side management programs and (ii)
590 efforts by the utility to improve efficiency and conserve energy in its internal operations
591 pursuant to § 56-235.1. The utility shall submit each annual report to the Division ~~of Energy~~
592 ~~of the Department of Mines, Minerals and Energy~~ by November 1 of each year, and the
593 Division shall compile the reports of the utilities and submit the compilation to the Governor
594 and the General Assembly as provided in the procedures of the Division of Legislative
595 Automated Systems for the processing of legislative documents.

596 **Drafting note: The phrase "but not limited to" is removed following the term**
597 **"including" on the basis of § 1-218, which states that throughout the Code "'Includes'**
598 **means includes, but not limited to." The reference to the Division of Energy is shortened**
599 **pursuant to the definitions section for the chapter.**

600 § ~~67-203~~ [45.2-xxx](#). Submission of [the](#) Plan.

601 Upon completion, the Division shall submit the Plan, including periodic updates
602 thereto, to the Governor, the Commissioners of the State Corporation Commission, and the
603 General Assembly. The Plan shall be submitted as provided in the procedures of the Division
604 of Legislative Automated Systems for the processing of legislative documents. The Plan's
605 executive summary shall be posted on the General Assembly's website.

606 **Drafting note: Technical change.**

607 ~~CHAPTER 6.~~

608 ~~VIRGINIA COASTAL ENERGY RESEARCH CONSORTIUM.~~

609 [Article 5.](#)

610 [Virginia Coastal Energy Research Consortium.](#)

611 **Drafting note: Existing Chapter 6 of Title 67, relating to the Virginia Coastal**
612 **Energy Research Consortium, is relocated as proposed Article 5 of Chapter 17.**

613 § ~~67-600~~ 45.2-xxx. Virginia Coastal Energy Research Consortium established; board
614 of directors.

615 A. The Virginia Coastal Energy Research Consortium, ~~hereinafter referred to as the~~
616 ~~Consortium~~, is hereby ~~created~~ established to include Old Dominion University, the Virginia
617 Institute of Marine Science of The College of William and Mary in Virginia, the Advanced
618 Research Institute of Virginia Polytechnic Institute and State University, James Madison
619 University, Norfolk State University, Virginia Commonwealth University, Hampton
620 University, George Mason University, and the University of Virginia and is to be located at
621 Old Dominion University.

622 ~~§ 67-602. Control and supervision.~~

623 B. The Consortium shall be governed by a board of directors (the Board), which shall
624 consist of 16 voting members as follows: ~~(i)~~ the Director ~~of the Department of Mines,~~
625 ~~Minerals and Energy~~ or his designee; ~~(ii)~~ the Commissioner of ~~the Virginia~~ Marine
626 Resources ~~Commission~~ or his designee; ~~(iii)~~ the President of the Virginia Manufacturers
627 Association or his appointed member of the maritime manufacturing industry; ~~(iv)~~ the
628 President of the Virginia Maritime Association or his appointed member of the maritime
629 industry; ~~(v)~~ the Director of the Advanced Research Institute of Virginia Polytechnic Institute
630 and State University or his designee; ~~(vi)~~ the President of Old Dominion University or his
631 designee; ~~(vii)~~ the Director of the Virginia Institute of Marine Science of The College of
632 William and Mary in Virginia or his designee; ~~(viii)~~ the President of Norfolk State University
633 or his designee; ~~(ix)~~ the President of James Madison University or his designee; ~~(x)~~ the
634 President of Virginia Commonwealth University or his designee; ~~(xi)~~ the President of the
635 University of Virginia or his designee; ~~(xii)~~ the President of Hampton University or his
636 designee; ~~(xiii)~~ the President of George Mason University or his designee; ~~(xiv)~~ the
637 chairman of the Hampton Roads Technology Council or his appointed member of the
638 technology community; ~~(xv)~~ the Director of the Hampton Roads Clean Cities Coalition or his

639 appointed member of the renewable energy industry; and ~~(xvi)~~ the Director of the
640 Department of Environmental Quality or his designee as the lead agency for the Virginia
641 Coastal Zone Management Program.

642 In addition, a representative of the National Aeronautics and Space Administration's
643 Langley Research Center, to be selected by the ~~director~~ Director of the Research Center, shall
644 serve as a nonvoting ex officio member of the ~~Consortium's board of directors~~ Board.

645 **Drafting note: Existing §§ 67-600 and 67-602 are combined and designated as**
646 **subsections A and B. The definition of "Consortium" is added to the chapter-wide**
647 **definitions section so the shortened version is used in this section. Other technical**
648 **amendments are made.**

649 § ~~67-601~~ 45.2-xxx. Functions, powers, and duties of the Consortium.

650 The Consortium shall serve as an interdisciplinary study, research, and information
651 resource for the Commonwealth on coastal energy issues. As used in this ~~chapter~~ article,
652 "coastal energy" includes wave or tidal action, currents, offshore winds, thermal differences,
653 and methane hydrates. The Consortium shall (i) consult with the General Assembly, federal,
654 state, and local agencies, nonprofit organizations, private industry, and other potential users of
655 coastal energy research; (ii) establish and administer agreements with other baccalaureate
656 institutions of higher education in the Commonwealth to carry out research projects relating to
657 the feasibility of increasing the Commonwealth's reliance on all domestic forms of coastal
658 energy; (iii) disseminate new information and research results; (iv) apply for grants made
659 available pursuant to federal legislation, including ~~but not limited to~~ the federal Methane
660 Hydrate Research and Development Act of 2000, P.L. 106-193, and from other sources; and
661 (v) facilitate the application and transfer of new coastal energy technologies.

662 **Drafting note: Technical changes are made and the phrase "but not limited to"**
663 **following "including" is removed pursuant to § 1-218, which states that throughout the**
664 **Code "'Includes' means includes, but not limited to."**

665 § ~~67-603~~ 45.2-xxx. Appointment of a director; powers and duties.

666 A. The ~~board of the Consortium~~ Board shall appoint an executive director to serve as
667 the principal administrative officer of the Consortium. The executive director shall report to
668 the ~~board of the Consortium~~ Board and be under its supervision.

669 ~~§ 67-604. Powers and duties of the director.~~

670 B. The executive director shall exercise all powers imposed upon him by law, carry
671 out the specific duties imposed ~~on~~ upon him by the ~~board of the Consortium~~ Board, and
672 develop appropriate policies and procedures for (i) identifying priority coastal energy research
673 projects; (ii) cooperating with the General Assembly, federal, state, and local governmental
674 agencies, nonprofit organizations, and private industry in formulating its research projects;
675 (iii) selecting research projects to be funded; and (iv) disseminating information and
676 transferring technology related to coastal energy within the Commonwealth. The executive
677 director shall employ such personnel and secure such services as may be required to carry out
678 the purposes of the Consortium, expend appropriated funds, and accept moneys from federal
679 or private sources for cost-sharing on coastal energy projects.

680 **Drafting note: Existing §§ 67-603 and 67-604 are combined and designated as**
681 **subsections A and B.**

682 ~~CHAPTER 16.~~

683 ~~SOUTHWEST VIRGINIA ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.~~

684 Article 6.

685 Southwest Virginia Energy Research and Development Authority.

686 **Drafting note: Existing Chapter 16 of Title 67, relating to the Southwest Virginia**
687 **Energy Research and Development Authority, is relocated as proposed Article 6 of**
688 **Chapter 17.**

689 ~~§ 67-1600~~ 45.2-xxx. (Expires July 1, 2029) Definitions.

690 As used in this ~~chapter~~ article, unless the context requires a different meaning:

691 "Authority" means the Southwest Virginia Energy Research and Development
692 Authority ~~created~~ established pursuant to this ~~chapter~~ article.

693 "Developer" means any private developer of an energy development project ~~in~~
694 ~~Southwest Virginia.~~

695 "Energy development project" means an electric generation facility located within
696 Southwest Virginia and includes interests in land, improvements, and ancillary facilities.

697 "Southwest Virginia" means the region of the Commonwealth designated as
698 Southwest Virginia in § 22.1-350.

699 **Drafting note: Technical changes.**

700 § ~~67-1601~~ 45.2-xxx. (Expires July 1, 2029) Southwest Virginia Energy Research and
701 Development Authority ~~created~~ established; purpose.

702 The Southwest Virginia Energy Research and Development Authority is ~~created~~
703 established as a ~~body corporate and a~~ political subdivision of the Commonwealth ~~and as such~~
704 ~~shall have, and is vested with, all of the politic and corporate powers as are set forth in this~~
705 ~~chapter~~. The ~~Authority is established for the~~ purposes of promoting the Authority are to
706 promote opportunities for energy development in Southwest Virginia, ~~to~~ create jobs and
707 economic activity in Southwest Virginia consistent with the Virginia Energy Plan prepared
708 pursuant to ~~Chapter 2 Article 4~~ (§ ~~67-200~~ 45.2-xxx et seq.), and ~~to~~ position Southwest
709 Virginia and the Commonwealth as a leader in energy workforce and energy technology
710 research and development. The Authority may also consult with research institutions,
711 businesses, nonprofit organizations, and stakeholders as the Authority deems appropriate. The
712 Authority shall have only those powers enumerated in this ~~chapter~~ article.

713 **Drafting note: The corporate language for the Southwest Virginia Energy**
714 **Research and Development Authority is updated to reflect current language for political**
715 **subdivisions in the Code. A redundant reference to the powers of the Authority in the**
716 **first sentence is removed. Technical changes are made.**

717 § ~~67-1602~~ 45.2-xxx. (Expires July 1, 2029) Membership; terms; vacancies; expenses.

718 A. The Authority shall ~~be composed~~ have a total membership of 11 nonlegislative
719 citizen members appointed as follows: ~~Four~~ four members ~~shall to~~ be appointed by the
720 Governor, four members ~~shall to~~ be appointed by the Speaker of the House of Delegates, and

721 three members ~~shall~~ to be appointed by the Senate Committee on Rules. All members of the
722 Authority shall ~~reside in~~ be citizens of the Commonwealth.

723 B. Except as otherwise provided ~~herein~~ in this article, all appointments shall be for
724 terms of four years each. No member shall be eligible to serve more than two successive four-
725 year terms. After expiration of an initial term of three years or less, two additional four-year
726 terms may be served by such member if appointed thereto. Appointments to fill vacancies,
727 other than by expiration of a term, shall be made for the unexpired terms. Any appointment to
728 fill a vacancy shall be made in the same manner as the original appointment. The remainder of
729 any term to which a member is appointed to fill a vacancy shall not constitute a term in
730 determining the member's eligibility for reappointment.

731 C. The Authority shall appoint from its membership a chairman and a vice-chairman,
732 ~~both~~ each of whom shall serve in such ~~capacities~~ capacity at the pleasure of the Authority.
733 The chairman, or in his absence the vice-chairman, shall preside at ~~all meetings~~ each meeting
734 of the Authority. The meetings of the Authority shall be held on the call of the chairman or
735 whenever a majority of the members so request. A majority of members of the Authority
736 serving at any one time shall constitute a quorum for the transaction of business.

737 D. Members shall serve without compensation. However, all members may be
738 reimbursed for all reasonable and necessary expenses incurred in the performance of their
739 duties as provided in §§ 2.2-2813 and 2.2-2825. Such expenses shall be paid from such funds
740 as may be appropriated to the Authority by the General Assembly.

741 E. Members of the Authority shall be subject to the standards of conduct set forth in
742 the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be
743 removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or
744 misconduct in the manner set forth therein.

745 F. Except as otherwise provided in this ~~chapter~~ article, members of the Authority shall
746 be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

747 **Drafting note: The corporate language for the Southwest Virginia Energy**
748 **Research and Development Authority is updated to reflect current language for political**

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

752 § ~~67-1603~~ 45.2-xxx. (Expires July 1, 2029) Powers and duties of the Authority.

753 In addition to ~~such~~ the other powers and duties established under this ~~chapter~~ article,
754 the Authority ~~shall have~~ has the power and duty to:

755 1. Adopt, use, and alter at will an official seal;

756 2. Make bylaws for the management and regulation of its affairs;

757 3. Maintain an office at ~~such~~ any place ~~or places~~ within the Commonwealth ~~as it may~~
758 ~~designate~~ designates;

759 4. Accept, hold, and administer moneys, grants, securities, or other property
760 transferred, given, or bequeathed to the Authority, absolutely or in trust, from any source,
761 public or private, for the purposes for which the Authority is ~~created~~ established;

762 5. Make and execute contracts and all other instruments and agreements necessary or
763 convenient for the exercise of its powers and functions;

764 6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants,
765 financial experts, investment bankers, superintendents, managers, and ~~such~~ any other
766 employees and agents ~~as may be~~ necessary and fix their compensation to be payable from
767 funds made available to the Authority;

768 7. Invest its funds as permitted by applicable law;

769 8. Receive and accept from any federal or private agency, foundation, corporation,
770 association, or person grants, donations of money, or real or personal property for the benefit
771 of the Authority, and receive and accept from the Commonwealth or any other state, ~~and~~ from
772 any municipality, county, or other political subdivision thereof ~~and~~, or from any other source,
773 aid or contributions of either money, property, or other things of value, to be held, used, and
774 applied for the purposes for which such grants and contributions may be made;

775 9. Enter into agreements with any department, agency, or instrumentality of the United
776 States or of the Commonwealth and with lenders and enter into loans with contracting parties

777 for the purpose of planning, regulating, and providing for the financing or assisting in the
778 financing of any project;

779 10. Do any lawful act necessary or appropriate to carry out the powers ~~herein~~ granted
780 or reasonably implied [in this article](#);

781 11. Leverage the strength in energy workforce and energy technology research and
782 development of ~~Virginia's~~ [the Commonwealth's](#) public and private institutions of higher
783 education;

784 12. Support the development of pump storage hydropower in Southwest Virginia and
785 energy storage generally;

786 13. Promote the development of renewable energy generation facilities on brownfield
787 sites, including abandoned mine sites;

788 14. Promote energy workforce development;

789 15. Assist energy technology research and development by, among other actions,
790 promoting the development of a Southwest Virginia Energy Park; and

791 16. Identify and work with the Commonwealth's industries and nonprofit partners in
792 advancing efforts related to energy development in Southwest Virginia.

793 **Drafting note: Technical changes are made and language is updated for modern**
794 **usage.**

795 § ~~67-1604~~ [45.2-xxx](#). (Expires July 1, 2029) Annual report.

796 On or before October 15 of each year, beginning in 2020, the Authority shall submit
797 an annual summary of its activities and recommendations to the Governor and the Chairmen
798 of the House [Committee on Appropriations](#) ~~Committee~~, the Senate [Committee on Finance](#)
799 ~~Committee~~, and [Appropriations](#), the House [Committee on Labor and Commerce](#), and [the](#)
800 Senate [Committee on Commerce and Labor](#) ~~Committees~~.

801 **Drafting note: Technical changes are made, including updating House and**
802 **Senate committee names changed in the 2020 Session.**

803 § ~~67-1605~~ [45.2-xxx](#). (Expires July 1, 2029) Confidentiality of information.

804 A. The Authority shall hold in confidence the personal and financial information
805 supplied to it, or maintained by it, concerning the siting and development of energy projects.

806 B. Nothing in this section shall prohibit the Authority, in its discretion, from releasing
807 any information that has been transformed into a statistical or aggregate form that does not
808 allow the identification of the person who supplied particular information.

809 C. Information supplied by or maintained on ~~persons~~ any person or ~~entities~~ entity
810 applying for or receiving ~~allocations~~ an allocation of any federal loan ~~guarantees~~ guarantee, as
811 well as specific information relating to the amount ~~and of, or the~~ identity of ~~recipients~~ the
812 recipient of, such ~~distributions~~ distribution, shall be subject to disclosure in accordance with
813 the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

814 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
815 **227, which states that throughout the Code any word used in the singular includes the**
816 **plural and vice versa.**

817 § ~~67-1606~~ 45.2-xxx. (Expires July 1, 2029) Declaration of public purpose; exemption
818 from taxation.

819 A. The exercise of the powers granted by this ~~chapter~~ article shall be in all respects for
820 the benefit of the citizens of the Commonwealth and for the promotion of their welfare,
821 convenience, and prosperity.

822 B. The Authority shall be deemed to be performing an essential governmental function
823 in the exercise of the powers conferred upon it by this ~~chapter~~ article, and the property of the
824 Authority and its income and operations shall be exempt from taxation or assessments upon
825 any property acquired or used by the Authority under the provisions of this ~~chapter~~ article.

826 **Drafting note: Technical changes are made and language is updated for modern**
827 **usage.**

828 § ~~67-1607~~ 45.2-xxx. (Expires July 1, 2029) Sunset.

829 The provisions of this ~~chapter~~ article shall expire on July 1, 2029.

830 **Drafting note: Technical changes.**

831 CHAPTER 18.

832

WIND ENERGY.

833

834

835

836

837

Drafting note: Existing Chapters 3 (§ 67-300 et seq.) and 12 (§ 67.1200) of Title 67, relating to wind energy, are relocated and combined with a related section in Title 45.1 to create proposed Chapter 18, Wind Energy. The proposed articles are as follows: Article 1, General Provisions, and Article 2, Virginia Offshore Wind Development Authority.

838

Article 1.

839

General Provisions.

840

841

Drafting note: Proposed Article 1 is created to logically organize general provisions applicable to proposed Chapter 18.

842

§ 45.2-xxx. Definitions.

843

As used in this chapter, unless the context requires a different meaning:

844

"Authority" means the Virginia Offshore Wind Development Authority established pursuant to Article 2 (§ 45.2-xxx [existing § 67-1200] et. seq.).

845

"Division" means the Division of Offshore Wind in the Department as established pursuant to § 45.2-xxx [existing § 45.1-161.5:1].

846

847

Drafting note: This section is created to consolidate definitions for proposed Chapter 18, Wind Energy.

848

~~CHAPTER 3.~~

849

~~OFFSHORE WIND ENERGY RESOURCES.~~

850

851

Drafting note: Existing Chapter 3 of Title 67, relating to offshore wind energy resources, is relocated as part of proposed Article 1 of Chapter 18.

852

~~§ 67-300~~ 45.2-xxx. Offshore wind energy resources; policy.

853

It is the policy of the Commonwealth to support federal efforts to examine the feasibility of offshore wind energy being utilized in an environmentally responsible fashion.

854

Drafting note: No change.

855

~~§ 67-301. Repealed.~~

856

Drafting note: Repealed by Acts 2020, cc. 451 and 452, cl. 2.

860 § ~~45.1-161.5:1~~ 45.2-xxx. Division of Offshore Wind; established.

861 A. The Director shall establish the Division of Offshore Wind ~~(Division)~~ in the
862 Department and shall appoint persons to direct, support, and execute the powers and duties of
863 the Division.

864 B. The powers and duties of the Division ~~shall~~ include:

865 1. Identifying specific measures that will facilitate the establishment of the Hampton
866 Roads region as a wind industry hub for offshore wind generation projects in state and federal
867 waters off the United States coast;

868 2. Coordinating state agencies' activities related to offshore wind, including
869 development of programs that prepare ~~Virginia's~~ the Commonwealth's workforce to work in
870 the offshore wind industry, create employment opportunities for Virginians within such
871 industry, create opportunities for ~~Virginia-based~~ Commonwealth-based businesses to
872 participate in the offshore wind industry supply chain, and attract out-of-state offshore wind-
873 related businesses to locate within the Commonwealth;

874 3. Developing and implementing a stakeholder engagement strategy that identifies key
875 groups, sets forth outreach objectives, and outlines a timeline for outreach and engagement;

876 4. Identifying regulatory and other barriers to the deployment of offshore wind and
877 attraction of offshore wind supply chain businesses; and

878 5. Providing staff support for the ~~Virginia Offshore Wind Development~~ Authority and
879 facilitating fulfillment of the Authority's purpose and duties set forth in ~~Chapter 12 (§ 67-1200~~
880 ~~et seq.) of Title 67~~ Article 2 (§ 45.2-xxx et seq.).

881 C. On or before October 15 of each year, the Division shall submit an annual summary
882 of its activities, the ways in which those ~~activates~~ activities have furthered the functions and
883 programs of the Division, and the benefits of the efforts of the Division to the Commonwealth
884 and its economy to the Governor and the ~~Chairs~~ Chairmen of the House Committee on
885 Appropriations, the Senate Committee on Finance and Appropriations, the House Committee
886 on Labor and Commerce, and the Senate Committee on Commerce and Labor. The Division

887 may include its submission with the report of the ~~Virginia Offshore Wind Development~~
888 Authority required by § ~~67-1209~~ [45.2-xxx](#).

889 **Drafting note: Technical changes are made and an apparent spelling error is**
890 **corrected in subsection C.**

891 ~~CHAPTER 12.~~

892 ~~VIRGINIA OFFSHORE WIND DEVELOPMENT AUTHORITY.~~

893 Article 2.

894 Virginia Offshore Wind Development Authority.

895 **Drafting note: Existing Chapter 12 of Title 67, relating to the Virginia Offshore**
896 **Wind Development Authority, is relocated as proposed Article 2 of Chapter 18.**

897 § ~~67-1200~~ [45.2-xxx](#). Definitions.

898 As used in this ~~chapter~~ [article](#), unless the context requires ~~another~~ [a different](#) meaning:

899 ~~"Authority" means the Virginia Offshore Wind Development Authority created~~
900 ~~pursuant to this chapter.~~

901 "Developer" means any private developer of offshore wind energy projects.

902 "Offshore wind energy project" means a wind-powered electric energy facility,
903 including tower, turbine, and associated equipment, located off the coast of the
904 Commonwealth beyond the Commonwealth's three-mile jurisdictional limit, and includes
905 interests in land, improvements, and ancillary facilities.

906 "Transmission study" means a study to determine the potential interconnection options
907 to accommodate multiple offshore wind energy projects in the Hampton Roads region [as](#)
908 [defined in § 22.1-356](#).

909 **Drafting note: The definition of the Virginia Offshore Wind Development**
910 **Authority is relocated to the chapter-wide definitions section. Technical changes are**
911 **made, including adding a cross-reference to define the Hampton Roads region.**

912 § ~~67-1201.~~ [45.2-xxx](#). [Virginia Offshore Wind Development](#) Authority ~~created~~
913 [established](#); purpose.

914 A. The Virginia Offshore Wind Development Authority is ~~created~~ established as a
915 ~~body corporate and a~~ political subdivision of the Commonwealth ~~and as such shall have, and~~
916 ~~is vested with, all of the politic and corporate powers as are set forth in this chapter.~~

917 B. The Authority is established for the purposes of facilitating, coordinating, and
918 supporting the development, either by the Authority or by other qualified entities, of the
919 offshore wind energy industry, offshore wind energy projects, and associated supply chain
920 vendors by (i) collecting relevant metocean and environmental data, ~~by;~~ (ii) identifying
921 existing state and regulatory or administrative barriers to the development of the offshore
922 wind energy industry, ~~by;~~ (iii) working in cooperation with relevant local, state, and federal
923 agencies to upgrade port and other logistical facilities and sites to accommodate the
924 manufacturing and assembly of offshore wind energy project components and vessels; ~~and by~~
925 (iv) ensuring that the development of such projects is compatible with other ocean uses and
926 avian and marine resources, including both the possible interference with and positive effects
927 on naval facilities and operations, NASA-Wallops Flight Facility operations, shipping lanes,
928 recreational and commercial fisheries, and avian and marine species and habitats.

929 C. The Authority shall, in cooperation with the relevant state and federal agencies as
930 necessary, recommend ways to encourage and expedite the development of the offshore wind
931 energy industry. The Authority shall also consult with research institutions, businesses,
932 nonprofit organizations, and stakeholders as the Authority deems appropriate.

933 D. The Authority shall have only those powers enumerated in this ~~chapter~~ article.

934 **Drafting note: The corporate language for the Virginia Offshore Wind**
935 **Development Authority is updated to reflect current language for political subdivisions**
936 **in the Code. Subsection designations are added and a redundant reference to the**
937 **Authority's powers in the first sentence is removed. Technical changes are made.**

938 § ~~67-1202~~ 45.2-xxx. Membership; terms; vacancies; expenses.

939 A. The Authority shall be composed of nine nonlegislative citizen members appointed
940 by the Governor, one of whom shall be a representative of the Virginia Commercial Space
941 Flight Authority as established in § 2.2-2202. In addition, one ex officio member without

942 voting privileges shall be selected by the Governor after consideration of the persons
943 nominated by the U.S. Secretary of the Navy. With the exception of the representative of the
944 Virginia Commercial Space Flight Authority, all members of the Authority shall ~~reside in~~ be
945 citizens of the Commonwealth.

946 B. Except as otherwise provided ~~herein in this article~~, all appointments shall be for
947 terms of four years each. No member shall be eligible to serve more than two successive four-
948 year terms. After expiration of an initial term of three years or less, two additional four-year
949 terms may be served by such member if appointed thereto. Appointments to fill vacancies,
950 other than by expiration of a term, shall be made for the unexpired terms. Any appointment to
951 fill a vacancy shall be made in the same manner as the original appointment. The remainder of
952 any term to which a member is appointed to fill a vacancy shall not constitute a term in
953 determining the member's eligibility for reappointment.

954 ~~C. The initial appointments of members shall be as follows: three members shall be~~
955 ~~appointed for terms of four years; three members shall be appointed for terms of three years;~~
956 ~~and three members shall be appointed for terms of two years. Thereafter all appointments~~
957 ~~shall be for terms of four years.~~

958 D. The Authority shall appoint from its membership a chairman and a vice-chairman,
959 ~~both~~ each of whom shall serve in such ~~capacities~~ capacity at the pleasure of the Authority.
960 The chairman, or in his absence the vice-chairman, shall preside at ~~all meetings~~ each meeting
961 of the Authority. The meetings of the Authority shall be held on the call of the chairman or
962 whenever a majority of the members so request. A majority of members of the Authority
963 serving at any one time shall constitute a quorum for the transaction of business.

964 ~~E.~~ D. Members shall serve without compensation. However, all members may be
965 reimbursed for all reasonable and necessary expenses incurred in the performance of their
966 duties as provided in §§ 2.2-2813 and 2.2-2825. Such expenses shall be paid from such funds
967 as may be appropriated to the Authority by the General Assembly.

968 ~~F.~~ E. Members of the Authority shall be subject to the standards of conduct set forth in
969 the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be

970 removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or
971 misconduct in the manner set forth therein.

972 ~~G.F.~~ Except as otherwise provided in this ~~chapter~~ [article](#), members of the Authority
973 shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et
974 seq.).

975 **Drafting note: The corporate language for the Virginia Offshore Wind**
976 **Development Authority is updated to reflect current language for political subdivisions**
977 **in the Code. Language in existing subsection C related to the staggering of initial terms**
978 **is stricken as obsolete and succeeding subsections are redesignated. Technical changes**
979 **are made, including changes pursuant to § 1-227, which states that throughout the Code**
980 **any word used in the singular includes the plural and vice versa.**

981 ~~§ 67-1203~~ [45.2-xxx](#). Data collection.

982 ~~A.~~ The Authority shall, through moneys derived from sources other than state funds,
983 to the extent such moneys are available, operate in cooperation with the National Oceanic and
984 Atmospheric Administration to upgrade wind resource and other metocean assessment
985 equipment at Chesapeake Light Tower and other structures.

986 [§ 45.2-xxx. Public-private partnerships.](#)

987 ~~B.~~ ~~A.~~ The Authority may establish public-private partnerships with ~~a developer~~
988 [developers](#) pursuant to the Public-Private ~~Educational~~ [Education](#) Facilities and Infrastructure
989 Act of 2002 (§ 56-575.1 et seq.) for [purposes set forth in this section.](#)

990 [B. The Authority may establish such a partnership for](#) the installation and operation of
991 wind resource and other metocean equipment, including light detection and ranging
992 equipment, meteorological measurement towers, and data collection platforms. Any
993 partnership established pursuant to this subsection shall stipulate that:

- 994 1. The Authority and the ~~developers~~ [developer](#) shall share the costs of the upgrade;
- 995 2. The developer, in coordination with the Authority and relevant state and federal
996 agencies, shall operate any meteorological measurement towers and data collection platforms;
- 997 and

998 3. The developer shall make all collected data available to the Authority.

999 C. The Authority may establish ~~public-private partnerships with a developer pursuant~~
1000 ~~to the Public-Private Educational Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.)~~
1001 such a partnership for the collection of avian and marine environmental data. Any partnership
1002 established pursuant to this subsection shall stipulate that:

1003 1. The Authority and the developer shall share the costs of data collection;

1004 2. The developer, in coordination with the Authority and relevant state and federal
1005 agencies, shall manage the environmental data collection process; and

1006 3. The developer shall make all collected data available to the Authority.

1007 D. The Authority may make any data collected pursuant to ~~this section~~ subsection B or
1008 C available to the public.

1009 ~~§ 67-1204. Port facilities upgrades.~~

1010 E. The Authority may establish ~~public-private partnerships with entities pursuant to~~
1011 ~~the Public-Private Educational Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.)~~
1012 such a partnership for the upgrade of port facilities and other logistical equipment and sites to
1013 accommodate the manufacturing and assembly of offshore wind energy project components
1014 and vessels that will support the construction and operations of offshore wind energy projects.
1015 Any partnership established pursuant to this subsection shall stipulate that the Authority and
1016 the entities shall share the costs of the upgrade.

1017 **Drafting note: Existing § 67-1203 is divided into two sections, the first of which is**
1018 **composed only of existing subsection A, relating to data collection. The final three**
1019 **subsections of existing § 67-1203 are combined with the succeeding section, § 67-1204,**
1020 **and the subsections are redesignated. Redundant Code references are removed.**

1021 ~~§ 67-1205~~ 45.2-xxx. Federal loan guarantees.

1022 A. The Authority, on behalf of the Commonwealth, may apply to the U.S. Department
1023 of Energy for federal loan guarantees authorized or made available pursuant to Title XVII of
1024 the federal Energy Policy Act of 2005, ~~42 U.S.C. § 16511 et seq.~~, P.L. 109-58; the federal

1025 American Recovery and Reinvestment Act of 2009, P.L. 111-5;² or other similar federal
1026 legislation, to facilitate the development of offshore wind energy projects.

1027 B. Upon obtaining a federal loan ~~guarantees~~ guarantee for an offshore wind energy
1028 ~~projects~~ project pursuant to subsection A, the Authority, subject to any restrictions imposed
1029 by federal law, may allocate or assign all or ~~portions~~ any portion thereof to a qualified third
1030 ~~parties,~~ party on ~~such~~ terms and conditions ~~as~~ the Authority finds ~~are~~ appropriate. ~~Actions~~
1031 Any action of the Authority relating to the allocation and assignment of such loan ~~guarantees~~
1032 guarantee shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000
1033 et seq.) pursuant to subdivision B 4 of § 2.2-4002. ~~Decisions~~ Any decision of the Authority
1034 pursuant to this section shall be final and not subject to review or appeal.

1035 **Drafting note: An erroneous citation for the federal Energy Policy Act of 2005 is**
1036 **replaced and technical changes are made, including changes pursuant to § 1-227, which**
1037 **states that throughout the Code any word used in the singular includes the plural and**
1038 **vice versa. Language is updated for modern usage.**

1039 ~~§ 67-1206. Transmission of power from offshore wind energy projects.~~

1040 ~~A. The incumbent, investor-owned utility for the onshore service territory adjacent to~~
1041 ~~any offshore wind generation project shall, at the request of the Department of Mines,~~
1042 ~~Minerals and Energy, initiate a transmission study. Such utility shall initiate the transmission~~
1043 ~~study no more than 30 days following the request of the Department of Mines, Minerals and~~
1044 ~~Energy, and shall report to the Department of Mines, Minerals and Energy within 180 days of~~
1045 ~~the request. The Department of Mines, Minerals and Energy shall report the results of the~~
1046 ~~study to the Authority. The Department of Mines, Minerals and Energy shall request the study~~
1047 ~~no later than July 31, 2010.~~

1048 ~~B. Upon receipt of the study, but no later than May 31, 2011, the Authority shall~~
1049 ~~recommend such actions as it deems appropriate to facilitate transmission of power from~~
1050 ~~offshore wind energy projects.~~

1051 **Drafting note: This section is proposed for deletion as obsolete.**

1052 ~~§ 67-1207~~ 45.2-xxx. Powers and duties of the Authority.

1053 In addition to ~~such~~ the other powers and duties established under this ~~chapter~~ article,
1054 the Authority ~~shall have~~ has the power and duty to:

- 1055 1. Adopt, use, and alter at will an official seal;
- 1056 2. Make bylaws for the management and regulation of its affairs;
- 1057 3. Maintain an office at ~~such~~ any place ~~or places~~ within the Commonwealth ~~as it may~~
1058 ~~designate~~ designates;
- 1059 4. Accept, hold, and administer moneys, grants, securities, or other property
1060 transferred, given, or bequeathed to the Authority, absolutely or in trust, from any source,
1061 public or private, for the purposes for which the Authority is ~~created~~ established;
- 1062 5. Make and execute contracts and all other instruments and agreements necessary or
1063 convenient for the exercise of its powers and functions;
- 1064 6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants,
1065 financial experts, investment bankers, superintendents, managers, and ~~such~~ any other
1066 employees and agents ~~as may be~~ necessary, and fix their compensation to be payable from
1067 funds made available to the Authority;
- 1068 7. Invest its funds as permitted by applicable law;
- 1069 8. Receive and accept from any federal or private agency, foundation, corporation,
1070 association, or person grants, donations of money, or real or personal property for the benefit
1071 of the Authority, and receive and accept from the Commonwealth or any other state, ~~and~~ from
1072 any municipality, county, or other political subdivision thereof ~~and~~, or from any other source,
1073 aid or contributions of either money, property, or other things of value, to be held, used, and
1074 applied for the purposes for which such grants and contributions may be made;
- 1075 9. Enter into agreements with any department, agency, or instrumentality of the United
1076 States or of the Commonwealth and with lenders and enter into loans with contracting parties
1077 for the purpose of planning, regulating, and providing for the financing or assisting in the
1078 financing of any project;
- 1079 10. Do any lawful act necessary or appropriate to carry out the powers ~~herein~~ granted
1080 or reasonably implied in this article;

1081 11. Identify and take steps to mitigate existing state and regulatory or administrative
1082 barriers to the development of the offshore wind energy industry, including facilitating any
1083 permitting processes; and

1084 12. Enter into interstate partnerships to develop the offshore wind energy industry and
1085 offshore wind energy projects.

1086 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
1087 **227, which states that throughout the Code any word used in the singular includes the**
1088 **plural and vice versa. Language is updated for modern usage.**

1089 § ~~67-1208~~ [45.2-xxx](#). Director; staff; counsel to the Authority.

1090 A. The Director ~~of the Department of Mines, Minerals and Energy~~ shall serve as
1091 Director of the Authority and shall administer the affairs and business of the Authority in
1092 accordance with the provisions of this ~~chapter~~ [article](#) and subject to the policies, control, and
1093 direction of the Authority. The Director shall maintain, and ~~be~~ [is](#) custodian of, all books,
1094 documents, and papers of or filed with the Authority. The Director may cause copies to be
1095 made of all minutes and other records and documents of the Authority and may give
1096 certificates under seal of the Authority to the effect that such copies are true copies, and all
1097 persons dealing with the Authority may rely on such certificates. The Director also shall
1098 perform such other duties as prescribed by the Authority in carrying out the purposes of this
1099 ~~chapter~~ [article](#).

1100 B. The Division ~~of Offshore Wind within the Department of Mines, Minerals and~~
1101 ~~Energy~~ shall serve as staff to the Authority.

1102 C. The Office of the Attorney General shall provide counsel to the Authority.

1103 **Drafting note: Technical changes are made. A reference to the Division of**
1104 **Offshore Wind is shortened pursuant to the chapter-wide definitions in proposed § 45.2-**
1105 **xxx [first section in proposed Chapter 18] and two unnecessary uses of the full name of**
1106 **the Department of Mines, Minerals and Energy are removed pursuant to the title-wide**
1107 **definitions in proposed § 45.2-xxx [first section in proposed Chapter 1].**

1108 § ~~67-1209~~ [45.2-xxx](#). Annual report.

1109 On or before October 15 of each year, the Authority shall submit an annual summary
1110 of its activities and recommendations to the Governor and the ~~Chairs~~ Chairmen of the House
1111 Committee on Appropriations, the Senate Committee on Finance and Appropriations, the
1112 House Committee on Labor and Commerce, and the Senate Committee on Commerce and
1113 Labor. Such report may include the submission of the Division ~~of Offshore Wind within the~~
1114 ~~Department of Mines, Minerals and Energy~~ required by § ~~45.1-161.5:1~~ 45.2-xxx.

1115 **Drafting note: A reference to the Division of Offshore Wind is shortened**
1116 **pursuant to the chapter-wide definitions in § 45.2-xxx [first section in proposed Chapter**
1117 **18] and an unnecessary use of the full name of the Department of Mines, Minerals and**
1118 **Energy is removed.**

1119 § ~~67-1210~~ 45.2-xxx. Confidentiality of information.

1120 A. The Authority shall hold in confidence the personal and financial information
1121 supplied to it, or maintained by it, concerning the siting and development of offshore wind
1122 energy projects.

1123 B. Nothing in this section shall prohibit the Authority, in its discretion, from releasing
1124 any information that has been transformed into a statistical or aggregate form that does not
1125 allow the identification of the person who supplied particular information.

1126 C. Information supplied by or maintained on ~~persons~~ any person or ~~entities~~ entity
1127 applying for or receiving ~~allocations~~ an allocation of any federal loan ~~guarantees~~ guarantee, as
1128 well as specific information relating to the amount ~~and of, or the~~ identity of ~~recipients~~ the
1129 recipient of, such ~~distributions~~ distribution, shall be subject to disclosure in accordance with
1130 the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

1131 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
1132 **227, which states that throughout the Code any word used in the singular includes the**
1133 **plural and vice versa.**

1134 § ~~67-1211~~ 45.2-xxx. Declaration of public purpose; exemption from taxation.

1135 A. The exercise of the powers granted by this ~~chapter~~ [article](#) shall be in all respects for
1136 the benefit of the citizens of the Commonwealth and for the promotion of their welfare,
1137 convenience, and prosperity.

1138 B. The Authority shall be [deemed to be](#) performing an essential governmental function
1139 in the exercise of the powers conferred upon it by this ~~chapter~~ [article](#), and the property of the
1140 Authority and its income and operations shall be exempt from taxation or assessments upon
1141 any property acquired or used by the Authority under the provisions of this ~~chapter~~ [article](#).

1142 **Drafting note: Technical changes are made and language is updated for modern**
1143 **usage.**

1144 [CHAPTER 19.](#)

1145 [SOLAR ENERGY.](#)

1146 **Drafting note: Proposed Chapter 19 is composed of general provisions as Article**
1147 **1, existing § 45.1-391 as Article 2, existing Chapter 15 (§ 67-1500 et seq.) of Title 67 as**
1148 **Article 3, and existing Chapter 27 (§ 45.1-395) of Title 45.1 as Article 4. The proposed**
1149 **articles are as follows: Article 1, General Provisions; Article 2, Virginia Solar Energy**
1150 **Center; Article 3, Virginia Solar Energy Development and Energy Storage Authority;**
1151 **and Article 4, Clean Energy Advisory Board.**

1152 [Article 1.](#)

1153 [General Provisions.](#)

1154 **Drafting note: Proposed Article 1 is created to logically organize general**
1155 **provisions applicable to proposed Chapter 19.**

1156 [§ 45.2-xxx. Definitions.](#)

1157 [As used in this chapter, unless the context requires a different meaning:](#)

1158 ["Center" means the Virginia Solar Energy Center established in § 45.2-xxx \[§ 45.1-](#)
1159 [391\].](#)

1160 **Drafting note: Proposed § 45.2-xxx [first section in proposed Chapter 19] is**
1161 **created to consolidate definitions in proposed Chapter 19. The definition of "Center" is**
1162 **added.**

1163

Article 2.

1164

Virginia Solar Energy Center.

1165

Drafting note: Proposed Article 2 is created to logically organize existing § 45.1-

1166

391, relating to the Virginia Solar Energy Center.

1167

§ ~~45.1-391~~ 45.2-xxx, Virginia Solar Energy Center; purposes.

1168

A. The Virginia Solar Energy Center is ~~continued~~ established as ~~a~~ part of the

1169

Department. The purposes of the Center are to (i) ~~to~~ serve the people of the Commonwealth as

1170

a clearinghouse to gather, maintain, and disseminate general and technical information on

1171

solar energy and its utilization; (ii) ~~to~~ coordinate programs for solar energy data-gathering in

1172

~~Virginia~~ the Commonwealth; (iii) ~~to~~ coordinate efforts and programs on solar energy with

1173

other state agencies and institutions, other states, and federal agencies; (iv) ~~to~~ promote

1174

cooperation among and between Virginia business, industry, and agriculture and the public

1175

related to the use of solar energy; (v) ~~to~~ develop public education programs on solar energy

1176

for use in schools and by the public; and (vi) ~~to~~ provide assistance in formulating policies on

1177

the utilization of solar energy that would be in the best interest of the Commonwealth.

1178

B. The intent of the General Assembly is to provide an organization for the purposes

1179

set out in this section to receive nonstate funds for such purposes.

1180

Drafting note: Technical changes are made, including the addition of subsection

1181

designations, and language is updated for modern usage.

1182

~~CHAPTER 15.~~

1183

~~VIRGINIA SOLAR ENERGY DEVELOPMENT AND ENERGY STORAGE~~

1184

~~AUTHORITY.~~

1185

Article 3.

1186

Virginia Solar Energy Development and Energy Storage Authority.

1187

Drafting note: Existing Chapter 15 (§ 67-1500 et seq.) of Title 67, relating to the

1188

Virginia Solar Energy Development and Energy Storage Authority, is relocated as

1189

proposed Article 3 of Chapter 19.

1190

§ ~~67-1500~~ 45.2-xxx. (Expires July 1, 2025) Definitions.

1191 As used in this ~~chapter~~ [article](#), unless the context requires a different meaning:

1192 "Authority" means the Virginia Solar Energy Development and Energy Storage
1193 Authority ~~created~~ [established](#) pursuant to this ~~chapter~~ [article](#).

1194 "Developer" means any private developer of a solar energy project or an energy
1195 storage project.

1196 "Energy storage project" means an energy storage facility located within the
1197 Commonwealth and includes interests in land, improvements, and ancillary facilities.

1198 "Solar energy project" means an electric generation facility located within the
1199 Commonwealth and includes interests in land, improvements, and ancillary facilities.

1200 **Drafting note: Technical changes.**

1201 § ~~67-1501~~ [45.2-xxx](#). (Expires July 1, 2025) [Virginia Solar Energy Development and](#)
1202 [Energy Storage](#) Authority ~~created~~ [established](#); purpose.

1203 The Virginia Solar Energy Development Authority is continued as the Virginia Solar
1204 Energy Development and Energy Storage Authority. The Authority constitutes a ~~body~~
1205 ~~corporate and a~~ political subdivision of the Commonwealth ~~and as such shall have, and is~~
1206 ~~vested with, all of the politic and corporate powers as are set forth in this chapter~~. The
1207 Authority is established for the purposes of (i) facilitating, coordinating, and supporting the
1208 development, either by the Authority or by other qualified entities, of the solar energy and
1209 energy storage industries and solar energy and energy storage projects by developing
1210 programs that increase the availability of financing for solar energy projects and energy
1211 storage projects; (ii) facilitating the increase of solar energy generation systems and energy
1212 storage projects on public and private sector facilities in the Commonwealth; (iii) promoting
1213 the growth of the ~~Virginia~~ [Commonwealth's](#) solar and energy storage industries; (iv)
1214 providing a hub for collaboration between entities, both public and private, to partner on solar
1215 energy projects and energy storage projects; and (v) positioning the Commonwealth as a
1216 leader in research, development, commercialization, manufacturing, and deployment of
1217 energy storage technology. The Authority may also consult with research institutions,

1218 businesses, nonprofit organizations, and stakeholders as the Authority deems appropriate. The
1219 Authority shall have only those powers enumerated in this ~~chapter~~ [article](#).

1220 **Drafting note: The corporate language for the Virginia Solar Energy**
1221 **Development and Energy Storage Authority is updated to reflect current language for**
1222 **political subdivisions in the Code. A redundant reference to the powers of the Authority**
1223 **in the first sentence is removed. Technical changes are made.**

1224 § ~~67-1502~~ [45.2-xxx](#). (Expires July 1, 2025) Membership; terms; vacancies; expenses.

1225 A. The Authority shall ~~be composed~~ [have a total membership](#) of 15 nonlegislative
1226 citizen members appointed as follows: ~~Eight~~ [eight](#) members ~~shall to~~ be appointed by the
1227 Governor; four members ~~shall to~~ be appointed by the Speaker of the House of Delegates; and
1228 three members ~~shall to~~ be appointed by the Senate Committee on Rules. All members of the
1229 Authority shall ~~reside in~~ [be citizens of](#) the Commonwealth. Members may include
1230 representatives of solar businesses, solar customers, renewable energy financiers, state and
1231 local government solar customers, institutions of higher education who have expertise in
1232 energy technology, and solar research academics.

1233 B. Except as otherwise provided ~~herein in this article~~, all appointments shall be for
1234 terms of four years each. No member shall be eligible to serve more than two successive four-
1235 year terms. After expiration of an initial term of three years or less, two additional four-year
1236 terms may be served by such member if appointed thereto. Appointments to fill vacancies,
1237 other than by expiration of a term, shall be made for the unexpired terms. Any appointment to
1238 fill a vacancy shall be made in the same manner as the original appointment. The remainder of
1239 any term to which a member is appointed to fill a vacancy shall not constitute a term in
1240 determining the member's eligibility for reappointment.

1241 ~~C. The initial appointments of members by the Governor made pursuant to Chapters~~
1242 ~~90 and 398 of the Acts of Assembly of 2015 shall be as follows: two members shall be~~
1243 ~~appointed for terms of four years, two members shall be appointed for terms of three years,~~
1244 ~~and two members shall be appointed for terms of two years. The initial appointments of~~
1245 ~~members by the Speaker of the House of Delegates made pursuant to Chapters 90 and 398 of~~

1246 ~~the Acts of Assembly of 2015 shall be as follows: one member shall be appointed for a term~~
1247 ~~of four years, one member shall be appointed for a term of three years, and one member shall~~
1248 ~~be appointed for a term of two years. The initial appointments of members by the Senate~~
1249 ~~Committee on Rules made pursuant to Chapters 90 and 398 of the Acts of Assembly of 2015~~
1250 ~~shall be as follows: one member shall be appointed for a term of four years, and one member~~
1251 ~~shall be appointed for a term of three years. Thereafter all appointments shall be for terms of~~
1252 ~~four years.~~

1253 ~~D.~~ The Authority shall appoint from its membership a chairman and a vice-chairman,
1254 ~~both~~ each of whom shall serve in such ~~capacities~~ capacity at the pleasure of the Authority.
1255 The chairman, or in his absence the vice-chairman, shall preside at ~~all meetings~~ each meeting
1256 of the Authority. The meetings of the Authority shall be held on the call of the chairman or
1257 whenever a majority of the members so request. A majority of members of the Authority
1258 serving at any one time shall constitute a quorum for the transaction of business.

1259 ~~E.~~ D. Members shall serve without compensation. However, all members may be
1260 reimbursed for all reasonable and necessary expenses incurred in the performance of their
1261 duties as provided in §§ 2.2-2813 and 2.2-2825. Such expenses shall be paid from such funds
1262 as may be appropriated to the Authority by the General Assembly.

1263 ~~F.~~ E. Members of the Authority shall be subject to the standards of conduct set forth in
1264 the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be
1265 removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or
1266 misconduct in the manner set forth therein.

1267 ~~G.~~ F. Except as otherwise provided in this ~~chapter~~ article, members of the Authority
1268 shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et
1269 seq.).

1270 **Drafting note: The corporate language for the Virginia Solar Energy**
1271 **Development and Energy Storage Authority is updated to reflect current language for**
1272 **political subdivisions in the Code. Language in existing subsection C related to the**
1273 **staggering of initial terms of members is stricken as obsolete and succeeding subsections**

1274 are redesignated. Technical changes are made, including changes pursuant to § 1-227,
1275 which states that throughout the Code any word used in the singular includes the plural
1276 and vice versa.

1277 § ~~67-1503~~ 45.2-xxx. (Expires July 1, 2025) Partnerships.

1278 A. The Authority may establish public-private partnerships with entities pursuant to
1279 the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) to
1280 increase the number of solar energy generation systems on or located adjacent to public and
1281 private facilities in the Commonwealth. Any partnership established pursuant to this section
1282 shall stipulate that the Authority and the developers shall share the costs of the installation and
1283 operation of solar energy facilities and equipment.

1284 B. The Authority may provide a central hub for appropriate entities, both public and
1285 private, to enter into partnerships that result in solar energy generation projects being
1286 developed in the Commonwealth. The Authority may act as a good faith broker in these
1287 matters to facilitate appropriate partnerships, including public-private partnerships.

1288 **Drafting note: No change.**

1289 § ~~67-1504~~ 45.2-xxx. (Expires July 1, 2025) Federal loan guarantees.

1290 A. The Authority, on behalf of the Commonwealth, may apply to the U.S. Department
1291 of Energy for federal loan guarantees authorized or made available pursuant to Title XVII of
1292 the federal Energy Policy Act of 2005, ~~42 U.S.C. § 16511 et seq.~~, P.L. 109-58; the federal
1293 American Recovery and Reinvestment Act of 2009, P.L. 111-5~~;~~ or other similar federal
1294 legislation~~;~~ to facilitate the development of solar energy projects.

1295 B. Upon obtaining a federal loan ~~guarantees~~ guarantee for a solar energy ~~projects~~
1296 project pursuant to subsection A, the Authority, subject to any restrictions imposed by federal
1297 law, may allocate or assign all or ~~portions~~ any portion thereof to a qualified third ~~parties,~~ party
1298 on ~~such~~ terms and conditions ~~as~~ the Authority finds ~~are~~ appropriate. ~~Actions~~ Any action of the
1299 Authority relating to the allocation and assignment of such loan ~~guarantees~~ guarantee shall be
1300 exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to

1301 subdivision B 4 of § 2.2-4002. ~~Decisions~~ Any decision of the Authority pursuant to this
1302 section shall be final and not subject to review or appeal.

1303 **Drafting note: An erroneous citation for the federal Energy Policy Act of 2005 is**
1304 **replaced and technical changes are made, including changes pursuant to § 1-227, which**
1305 **states that throughout the Code any word used in the singular includes the plural and**
1306 **vice versa. Language is updated for modern usage.**

1307 § ~~67-1505~~ 45.2-xxx. (Expires July 1, 2025) Powers and duties of the Authority.

1308 In addition to ~~such~~ other powers and duties established under this ~~chapter~~ article, the
1309 Authority ~~shall have~~ has the power and duty to:

1310 1. Adopt, use, and alter at will an official seal;

1311 2. Make bylaws for the management and regulation of its affairs;

1312 3. Maintain an office at ~~such~~ any place ~~or places~~ within the Commonwealth ~~as it may~~
1313 ~~designate~~ designates;

1314 4. Accept, hold, and administer moneys, grants, securities, or other property
1315 transferred, given, or bequeathed to the Authority, absolutely or in trust, from any source,
1316 public or private, for the purposes for which the Authority is ~~created~~ established;

1317 5. Make and execute contracts and all other instruments and agreements necessary or
1318 convenient for the exercise of its powers and functions;

1319 6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants,
1320 financial experts, investment bankers, superintendents, managers, and ~~such~~ any other
1321 employees and agents ~~as may be~~ necessary and fix their compensation to be payable from
1322 funds made available to the Authority;

1323 7. Invest its funds as permitted by applicable law;

1324 8. Receive and accept from any federal or private agency, foundation, corporation,
1325 association, or person grants, donations of money, or real or personal property for the benefit
1326 of the Authority, and receive and accept from the Commonwealth or any other state, ~~and~~ from
1327 any municipality, county, or other political subdivision thereof ~~and~~, or from any other source,

1328 aid or contributions of either money, property, or other things of value, to be held, used, and
1329 applied for the purposes for which such grants and contributions may be made;

1330 9. Enter into agreements with any department, agency, or instrumentality of the United
1331 States or of the Commonwealth and with lenders and enter into loans with contracting parties
1332 for the purpose of planning, regulating, and providing for the financing or assisting in the
1333 financing of any project;

1334 10. Do any lawful act necessary or appropriate to carry out the powers ~~herein~~ granted
1335 or reasonably implied [in this article](#);

1336 11. Identify and take steps to mitigate existing state and regulatory or administrative
1337 barriers to the development of the solar energy and energy storage industries, including
1338 facilitating any permitting processes;

1339 12. Enter into interstate partnerships to develop the solar energy industry, solar energy
1340 projects, and energy storage projects;

1341 13. Collaborate with entities, including institutions of higher education, to increase the
1342 training and development of the workforce needed by the solar and energy storage industries
1343 in the Commonwealth, including industry-recognized credentials and certifications;

1344 14. Conduct any other activities as may seem appropriate to increase solar energy
1345 generation in the Commonwealth and the associated jobs and economic development and
1346 competitiveness benefits, including assisting investor-owned utilities in the planned
1347 deployment of at least 400 megawatts of solar energy projects in the Commonwealth by 2020
1348 through entering into agreements in its discretion in any manner provided by law for the
1349 purpose of planning and providing for the financing or assisting in the financing of the
1350 construction or purchase of such solar energy projects authorized pursuant to § 56-585.1;

1351 15. Promote collaborative efforts among ~~Virginia's~~ [the Commonwealth's](#) public and
1352 private institutions of higher education in research, development, and commercialization
1353 efforts related to energy storage;

1354 16. Monitor relevant developments in energy storage technology and deployment
1355 nationally and globally and disseminate relevant information and research results; and

1356 17. Identify and work with the Commonwealth's industries and nonprofit partners in
1357 advancing efforts related to the development and commercialization of energy storage.

1358 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
1359 **227, which states that throughout the Code any word used in the singular includes the**
1360 **plural and vice versa. Language is updated for modern usage.**

1361 § ~~67-1506~~ [45.2-xxx](#). (Expires July 1, 2025) Director; staff; counsel to the Authority.

1362 A. The Director ~~of the Department of Mines, Minerals and Energy~~ shall serve as
1363 Director of the Authority and shall administer the affairs and business of the Authority in
1364 accordance with the provisions of this ~~chapter~~ [article](#) and subject to the policies, control, and
1365 direction of the Authority. The Director may obtain non-state-funded support to carry out any
1366 duties assigned to the Director. Funding for this support may be provided by any source,
1367 public or private, for the purposes for which the Authority is ~~created~~ [established](#). The Director
1368 shall maintain, and ~~be~~ [is](#) custodian of, all books, documents, and papers of or filed with the
1369 Authority. The Director may cause copies to be made of all minutes and other records and
1370 documents of the Authority and may give certificates under seal of the Authority to the effect
1371 that such copies are true copies, and all persons dealing with the Authority may rely on such
1372 certificates. The Director also shall perform such other duties as prescribed by the Authority
1373 in carrying out the purposes of this ~~chapter~~ [article](#).

1374 B. The Department ~~of Mines, Minerals and Energy~~ shall serve as staff to the
1375 Authority.

1376 C. The Office of the Attorney General shall provide counsel to the Authority.

1377 **Drafting note: Technical changes are made. Unnecessary uses of the full name of**
1378 **the Department of Mines, Minerals and Energy are removed pursuant to the title-wide**
1379 **definitions in proposed § 45.2-xxx [first section in proposed Chapter 1].**

1380 § ~~67-1507~~ [45.2-xxx](#). (Expires July 1, 2025) Annual report.

1381 On or before October 15 of each year, ~~beginning in 2016~~, the Authority shall submit
1382 an annual summary of its activities and recommendations to the Governor and the Chairmen
1383 of the House [Committee on Appropriations](#) ~~Committee~~, the Senate [Committee on Finance](#)

1384 ~~Committee~~, and Appropriations, the House Committee on Labor and Commerce, and the
1385 Senate Committee on Commerce and Labor-~~Committees~~.

1386 **Drafting note: The obsolete 2016 date is stricken and language is updated for**
1387 **modern usage, including updating House and Senate committee names changed in the**
1388 **2020 Session.**

1389 § ~~67-1508~~ 45.2-xxx. (Expires July 1, 2025) Confidentiality of information.

1390 A. The Authority shall hold in confidence the personal and financial information
1391 supplied to it, or maintained by it, concerning the siting and development of solar energy
1392 projects and energy storage projects.

1393 B. Nothing in this section shall prohibit the Authority, in its discretion, from releasing
1394 any information that has been transformed into a statistical or aggregate form that does not
1395 allow the identification of the person who supplied particular information.

1396 C. Information supplied by or maintained on ~~persons~~ any person or ~~entities~~ entity
1397 applying for or receiving ~~allocations~~ an allocation of any federal loan ~~guarantees~~ guarantee, as
1398 well as specific information relating to the amount ~~and of, or the~~ identity of ~~recipients~~ the
1399 recipient of, such ~~distributions~~ distribution, shall be subject to disclosure in accordance with
1400 the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

1401 **Drafting note: Technical changes are made, including changes pursuant to § 1-**
1402 **227, which states that throughout the Code any word used in the singular includes the**
1403 **plural and vice versa.**

1404 § ~~67-1509~~ 45.2-xxx. (Expires July 1, 2025) Declaration of public purpose; exemption
1405 from taxation.

1406 A. The exercise of the powers granted by this ~~chapter~~ article shall be in all respects for
1407 the benefit of the citizens of the Commonwealth and for the promotion of their welfare,
1408 convenience, and prosperity.

1409 B. The Authority shall be deemed to be performing an essential governmental function
1410 in the exercise of the powers conferred upon it by this chapter, and the property of the

1411 Authority and its income and operations shall be exempt from taxation or assessments upon
1412 any property acquired or used by the Authority under the provisions of this ~~chapter~~ [article](#).

1413 **Drafting note: Language is updated for modern usage.**

1414 [§ 45.2-xxx. Sunset.](#)

1415 [The provisions of this article shall expire on July 1, 2025.](#)

1416 **Drafting note: The second enactment of Acts 2015, cc. 90 and 398, which provides**
1417 **a sunset date for proposed Article 3, is proposed for codification.**

1418 ~~Chapter 27.~~ [Article 4.](#)

1419 Clean Energy Advisory Board.

1420 **Drafting note: Existing Chapter 27, concerning the Clean Energy Advisory**
1421 **Board, is relocated to proposed Article 4.**

1422 [§ 45.2-xxx. Definitions.](#)

1423 [As used in this article, unless the context requires a different meaning:](#)

1424 ["Board" means the Clean Energy Advisory Board created pursuant to § 45.2-xxx](#)
1425 [\[45.1-395\].](#)

1426 ["Fund" means the Low-to-Moderate Income Solar Loan and Rebate Fund created](#)
1427 [pursuant to § 45.2-xxx \[45.1-398\].](#)

1428 ["Program" means the Low-to-Moderate Income Solar Loan and Rebate Pilot Program](#)
1429 [created pursuant to § 45.2-xxx \[45.1-399\].](#)

1430 **Drafting note: Article-wide definitions section added.**

1431 ~~§ 45.1-395~~ [45.2-xxx](#). Clean Energy Advisory Board; purpose.

1432 The Clean Energy Advisory Board ~~(the Board)~~ is established as an advisory board in
1433 the executive branch of state government. The purpose of the Board is to establish a pilot
1434 program for disbursing loans or rebates for the installation of solar energy infrastructure in
1435 low-income and moderate-income households.

1436 **Drafting note: Technical change.**

1437 ~~§ 45.1-396~~ [45.2-xxx](#). Membership; terms; quorum; meetings.

1438 A. The Board shall have a total membership of 17 members that shall consist of 16
1439 nonlegislative citizen members and one ex officio member. Members may reside within or
1440 without the Commonwealth. Nonlegislative citizen members shall be appointed as follows:

1441 1. Six nonlegislative citizen members to be appointed by the Speaker of the House of
1442 Delegates upon consideration of the recommendations of the Board of Directors of the
1443 Maryland-DC-Delaware-Virginia Solar Energy Industries Association (the MDV-SEIA
1444 Board) and the Governor's Advisory Council on Environmental Justice (the Council), one of
1445 whom shall be a designee of the Virginia Housing Development Authority, created pursuant
1446 to the provisions of Chapter 1.2 (§ 36-55.24 et seq.) of Title 36; one of whom shall be a
1447 rooftop solar energy professional or employer or representative of rooftop solar energy
1448 professionals; one of whom shall be a current or former member of the Council; one of whom
1449 shall be a member or representative of the Virginia, Maryland and Delaware Association of
1450 Electric Cooperatives (VMDAEC); one of whom shall be an expert with experience
1451 developing low-income or moderate-income incentive and loan programs for distributed
1452 renewable energy resources; and one of whom shall be an attorney who is licensed to practice
1453 in the Commonwealth and maintains a legal practice dedicated to rural development, rural
1454 electrification, and energy policy;

1455 2. Three nonlegislative citizen members to be appointed by the Senate Committee on
1456 Rules upon consideration of the recommendations of the MDV-SEIA Board, one of whom
1457 shall be a solar energy professional or employer or representative of solar energy
1458 professionals, one of whom shall work for or with a ~~Virginia-based~~ Commonwealth-based
1459 investor-owned electric utility company, and one of whom shall be a member or
1460 representative of VMDAEC; and

1461 3. Seven nonlegislative citizen members to be appointed by the Governor upon
1462 consideration of the recommendations of the MDV-SEIA Board and the Council and subject
1463 to confirmation by the General Assembly, one of whom shall be an attorney who is licensed
1464 to practice in the Commonwealth and maintains a legal practice in renewable energy law and
1465 transactions, one of whom shall be an attorney who is licensed to practice in the

1466 Commonwealth and specializes in tax law and energy transactions, one of whom shall be an
1467 attorney with the Division of Consumer Counsel created pursuant to the provisions of § 2.2-
1468 517, one of whom shall be an employee of a community development financial institution
1469 who specializes in impact investing, one of whom shall be a member of a Virginia
1470 environmental organization, and two of whom shall be designees of the Department of
1471 Housing and Community Development, created pursuant to the provisions of Chapter 8 (§ 36-
1472 131 et seq.) of Title 36.

1473 B. The Director or his designee shall serve ex officio with voting privileges and shall
1474 assist in convening the meetings of the Board.

1475 C. Nonlegislative citizen members of the Board shall be citizens of the
1476 Commonwealth. The ex officio member of the Board shall serve a term coincident with his
1477 term of office. Nonlegislative citizen members shall be appointed for a term of three years.
1478 Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired
1479 terms. Vacancies shall be filled in the same manner as the original appointments. All
1480 members may be reappointed.

1481 D. The Board shall elect a chairman and vice-chairman from among its membership.
1482 A majority of the members shall constitute a quorum. The meetings of the Board shall be held
1483 at the call of the chairman or whenever the majority of the members so request.

1484 **Drafting note: Technical changes.**

1485 § ~~45.1-397~~ 45.2-xxx. Powers and duties of the Board; report.

1486 The Board ~~shall have~~ has the ~~following~~ powers and duties to:

1487 1. ~~To advise~~ Advise the Director on the management of the ~~Low-to-Moderate Income~~
1488 ~~Solar Loan and Rebate Fund (the Fund)~~ pursuant to the provisions of § ~~45.1-398~~ 45.2-xxx;

1489 2. ~~To develop~~ Develop, establish, and operate, with the approval of the Director, ~~a~~
1490 ~~Low-to-Moderate Income Solar Loan and Rebate Pilot~~ the Program ~~(the Program)~~ pursuant to
1491 the provisions of § ~~45.1-399~~ 45.2-xxx;

1492 3. ~~To advise~~ Advise the Director on the possibility of working with a community
1493 development financial institution or other financial institutions to further the purposes of the
1494 Program;

1495 4. ~~To advise~~ Advise the Director on the distribution of moneys in the Fund in the form
1496 of loans or rebates pursuant to the provisions of § ~~45.1-399~~ 45.2-xxx; and

1497 5. ~~To submit~~ Submit to the Governor and the General Assembly an annual report for
1498 publication as a report document as provided in the procedures of the Division of Legislative
1499 Automated Systems for the processing of legislative documents and reports. The chairman
1500 shall submit to the Governor and the General Assembly an annual executive summary of the
1501 interim activity and work of the Board no later than the first day of each regular session of the
1502 General Assembly. The executive summary shall be submitted for publication as a report
1503 document as provided in the procedures of the Division of Legislative Automated Systems for
1504 the processing of legislative documents and reports and shall be posted on the General
1505 Assembly's website.

1506 **Drafting note: Language is updated for modern usage and technical changes are**
1507 **made.**

1508 § ~~45.1-398~~ 45.2-xxx. Low-to-Moderate Income Solar Loan and Rebate Fund.

1509 There is hereby ~~created~~ established in the state treasury a special nonreverting fund to
1510 be known as the Low-to-Moderate Income Solar Loan and Rebate Fund ~~(the Fund)~~. The Fund
1511 shall be established on the books of the Comptroller. All funds appropriated for such purpose
1512 and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid
1513 into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall
1514 remain in the Fund and be credited to it. Any moneys remaining in the Fund, including
1515 interest thereon, at the end of each fiscal year shall not revert to the general fund but shall
1516 remain in the Fund. Moneys in the Fund shall be used solely for the purposes of extending
1517 loans or paying rebates to electric customers who complete solar installations or energy
1518 efficiency improvements pursuant to the provisions of § ~~45.1-399~~ 45.2-xxx. Expenditures and

1519 disbursements from the Fund shall be made by the State Treasurer on warrants issued by the
1520 Comptroller upon written request signed by the Director.

1521 **Drafting note: Language is updated for modern usage and technical changes are**
1522 **made.**

1523 § ~~45.1-399~~ 45.2-xxx. Low-to-Moderate Income Solar Loan and Rebate Pilot Program.

1524 A. The Board, with the approval of the Director, shall develop and establish a Low-to-
1525 Moderate Income Solar Loan and Rebate Pilot Program ~~(the Program)~~ and rules for the loan
1526 or rebate application process. The Program shall be open to any Virginia resident whose
1527 household income is at or below 80 percent of the state median income or regional median
1528 income, whichever is greater. The Program shall allow only one loan per residence,
1529 irrespective of the ownership of the solar energy system that is installed. Such loan shall be
1530 available only for a solar installation or energy efficiency improvements pursuant to the
1531 provisions of Chapter 1.2 (§ 36-55.24 et seq.) of Title 36.

1532 B. The Board shall accept an application only from the installer of the solar
1533 installation or the agent of the customer.

1534 Each application shall include (i) 12 months of the customer's utility bills prior to
1535 installation of the solar energy system and an agreement to provide 12 months of utility bills
1536 to the Board following the installation; (ii) the customer's permission for the Director to (a)
1537 create a customer profile for the customer if he becomes an eligible loan or rebate customer,
1538 (b) aggregate the data provided by such eligible loan or rebate customers, and (c) use such
1539 aggregate data for the purpose of lowering energy costs and implementing effective programs;
1540 (iii) evidence of the completion of a home performance audit, conducted by a qualified local
1541 weatherization service provider, before and after installation of energy efficiency services
1542 such as lighting or insulation improvements, attic tents, weatherization, air sealing of
1543 openings in the building envelope, sealing of ducts, or thermostat upgrades, to demonstrate
1544 that such energy efficiency services were completed and resulted in a reduction in
1545 consumption of at least 12 percent; and (iv) an affidavit attesting to the receipt of a public
1546 benefit at the time the solar energy system is to be installed.

1547 C. The Board shall review each application submitted to it on a first-come, first-served
1548 basis and shall recommend to the Director the approval or denial of each such application
1549 within 30 days of receipt. If the Director approves an application, he shall hold a reservation
1550 of funds for as long as 180 days for final loan or rebate claim and disbursement.

1551 D. A customer whose application is approved may install an energy system that is
1552 interconnected pursuant to the provisions of § 56-594 or any section in Title 56 that addresses
1553 net energy metering provisions for electric cooperative service territories.

1554 E. All of the work of installing the energy system shall be completed by a licensed
1555 contractor that (i) possesses an Alternative Energy System (AES) Contracting specialty as
1556 defined by the Board for Contractors pursuant to the provisions of Chapter 11 (§ 54.1-1100 et
1557 seq.) of Title 54.1; (ii) possesses certification for solar installation from the North American
1558 Board of Certified Energy Practitioners, Solar Energy International, Roof Integrated Solar
1559 Energy, or a similar installer certification program; (iii) possesses a rating of "A" or higher
1560 from the local Better Business Bureau; and (iv) has installed a minimum of 150 net-metered
1561 residential solar systems in ~~Virginia~~ [the Commonwealth](#). If the work of installing the solar
1562 energy system requires electrical work, it shall be completed by an electrical contractor
1563 licensed by the Virginia Department of Professional and Occupational Regulation. All
1564 photovoltaic panels, inverters, and other electrical apparatus used in the solar energy system
1565 shall be tested and certified by a federal Occupational Safety and Health Administration
1566 Nationally Recognized Testing Laboratory such as UL LLC and installed in compliance with
1567 manufacturer specifications and all applicable building and electrical codes.

1568 F. The customer or the installer, acting on behalf of the customer, shall submit any
1569 loan or rebate claim within 90 days of completion of the installation of the solar energy
1570 system, with completion deemed to have occurred once the solar energy system's bi-
1571 directional meter or net meter, or the respective utility's revenue grade meter, has been
1572 installed and the system has been electrified. Each rebate claim shall include, at a minimum, a
1573 date of system electrification and a time-stamped and date-stamped verification of (i) bi-

1574 directional net meter delivery or (ii) the operation of a compatible programmed smart meter
1575 capable of tracking net metering activity.

1576 G. The Director shall review and approve or deny a loan or rebate claim within 60
1577 days of receipt and shall provide a written explanation of each denial to the respective
1578 claimant. The Director shall disburse from the ~~Low to Moderate Income Solar Loan and~~
1579 ~~Rebate~~ Fund created pursuant to § ~~45.1-398~~ 45.2-xxx the loan or rebate for each approved
1580 claim within 60 days of its receipt of the claim and according to the order in which its
1581 respective application was approved. Any rebate or grant shall be in the amount of no more
1582 than \$2 per DC watt for up to six kilowatts of solar capacity installed. The customer may use
1583 a rebate in addition to any federal tax credits or state incentives or enhancements earned for
1584 the same solar installation.

1585 **Drafting note: Technical changes.**

1586 ~~§ 45.1-400. Repealed.~~

1587 **Drafting note: Repealed by Acts 2020, c. 803, cl. 2.**

1588 #