

**Virginia Code Commission
Meeting Materials
October 6, 2020**

VIRGINIA CODE COMMISSION

Monday, August 3, 2020 - 1:30 p.m.

Electronic Meeting

DRAFT

Meeting Minutes

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

Members Absent: None

Staff Present: Maryann Horch, Senate Technology; Amigo Wade, David Barry, Scott Meacham, Emma Buck, Anne Bloomsburg, 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 1:33 p.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.

Approval of minutes: The minutes of the July 7, 2020, meeting of the Commission, as printed and distributed to the members, were approved without objection.

Review of § 5.1-178 currently shown as "Not Set Out" in the Code of Virginia: Emma Buck informed the Commission that § 5.1-178 was the only section to review during the meeting. Ms. Buck suggested the section be repealed, as the provisions of the section have been accomplished pursuant to 49 U.S.C. § 49101 et seq.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. Delegate Simon moved that the Commission sponsor a bill to repeal the section. Judge Sharp seconded the motion, and the motion passed unanimously.

Recodification of Title 45.1, Mines and Mining: Scott Meacham proposed the Commission amend the title name for 45.1 by changing it to "Mines, Minerals, and Energy." Delegate Scott moved to adopt the new title name, and Mr. Towell seconded the motion. The motion passed unanimously.

Mr. Meacham began with reviewing what the Commission previously had discussed regarding Chapter 11 of Title 45.1 about maps that were required to be submitted to the Department of Mines, Minerals and Energy as found in current subsection B of 45.1-161.292:37 (line 844 on page 31 in Chapter 11 Follow up of the meeting materials). Mr. Meacham stated the recodification workgroup found an existing section in another part of the Code of Virginia that requires every map be turned into the department, regardless of circumstance, which is the department's current practice. Therefore, Mr. Meacham suggested striking the first sentence of current subsection B to erase any conflict with existing practices and other Code sections.

Mr. Meacham presented changes to proposed Chapter 16 of Subtitle IV and Chapters 17, 18, and 19 of Subtitle V of Title 45.2. References are to current sections numbers as new Title 45.2 numbers have not been assigned.

Section 45.1-10 (line 428, page 16 of 63): Mr. Meacham recommended deleting "do so in duplicate." The provision, which required certain leases to be executed in duplicate, likely dated from an earlier era and is no longer necessary as the provision also states that the lessee will receive a copy of the executed lease.

Section 45.1-361.19 (lines 598-599, page 23 of 63): Mr. Meacham discussed striking "that are widely circulated" in the phrase "newspapers of general circulation that are widely circulated" as the phrase was redundant.

Section 45.1-361.21:1 (line 749, page 28 of 63): Mr. Meacham proposed entering the enactment date of April 13, 2010, as the enactment date is normally included in titles during codification, but was overlooked in this title when originally promulgated.

Section 45.1-361.32 (line 1275, page 48 of 63): Mr. Meacham noted that the language refers to the "end of the biennium" versus the more modern and commonly used "end of the fiscal year," and asked the Commission for insight on why "biennium" would be used in this section. Senator Edwards shared that there was a biennial budget, but it was usually revised yearly. Mr. Meacham said the language would be amended to read "end of the fiscal year" for clarity.

Mr. Meacham stated that language from Title 62.1 of the Code of Virginia would be added to as new Article 4, Drilling for Gas or Oil in the Chesapeake Bay or Tidewater Virginia, in Chapter 16, as it deals with gas and oil drilling.

Mr. Meacham covered Chapter 17 of Title 45.2, dealing with other sources of energy, and directed the Commission to Article 2, Energy and Operational Efficiency Performance-Based Contracting Act, (pages 4-10 of 58) where a number of sections from Title 11 of the Code of Virginia have been placed. Mr. Meacham said these types of amendments were typical for recodification.

Section 67-100 (line 263, page 10 of 58): Mr. Meacham pointed out this section on legislative findings, which is often not printed into the Code. He explained how the first three subdivisions were modified and subdivisions 4 and 5 were added during the 2020 legislative session. The proposal is to retain this section, although other sections on legislative findings may be recommended for repeal.

Section 67-1601 (line 703, page 26 of 58): Mr. Meacham stated that the Southwest Virginia Energy Research and Development Authority was created by the General Assembly as a "body corporate." However, the term "body corporate" is no longer standard drafting practice. Mr. Meacham recommended removing the term, which would not affect the content of the section.

Other amendments in the chapter included importing sections from Title 67 as new subsections, fixing spelling errors, and reorganizing for clarity.

Mr. Meacham said there would be one more Code Commission meeting before the workgroup would begin submitting the report on recodification.

Other business: Mr. Armstrong had two items. The first was a difference in terminology between the statute appointing a guardian for the estate of an adult versus that for a minor. The term "conservator" is used for adults, but "guardian" is used for minors. The second was the absence of a statute regarding sentencing by a judge, as compared to the statute for sentencing by a jury. Senator Edwards said the Senate Committee on Judiciary was looking into the second item, and that he will contact Mr. Armstrong regarding both items.

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 2:19 p.m.

Next meeting: Next meeting is September 8, 2020, at 10:00 a.m. by electronic means.

Item 2 - 2021 Code of Virginia pricing and replacement volumes proposal

VIRGINIA CODE ANNOTATED

	2021 PRICES				2020 PRICES			
	STATE (6 Replacement Volumes)	PRIVATE	STATE (5 Replacement Volumes)	PRIVATE	STATE (4 Replacement Volumes)	PRIVATE	STATE (4 Replacement Volumes)	PRIVATE
SUPPLEMENT	\$221.00	\$285.50	\$231.50	\$301.25	\$254.00	\$338.50	\$242.00	\$322.35
INDEX	\$112.00	\$118.50	\$112.00	\$118.50	\$112.00	\$118.50	\$106.50	\$112.75
VOLUMES (EACH)	\$60.25	\$75.00	\$60.25	\$75.00	\$60.25	\$75.00	\$57.35	\$71.35
VOLUME 11	\$45.75	\$60.25	\$45.75	\$60.25	\$45.75	\$60.25	\$43.60	\$57.35
VOLUME 11 SUPP	\$15.50	\$15.50	\$15.50	\$15.50	\$15.50	\$15.50	\$14.70	\$14.70
ADVANCE CODE		\$91.00		\$91.00		\$91.00		\$86.65
SERVICE								
TOTAL	\$755.75	\$1,020.75	\$706.00	\$961.50	\$668.25	\$923.75	\$636.20	\$879.20

(STATE GOVERNMENT PRICING FOR PURCHASES OUTSIDE OF THE CODE COMMISSION PURCHASE)

PPI increase is 8.4 % since August 2019. The proposed price increase above reflects a **5%** increase.

Recommended replacement volumes - shown in yellow on chart:

1B - Titles 4.1 (Alcoholic Beverages) to 6.2 (Financial Institutions)

3 - Titles 11 (Contracts) to 13.1 (Corporations)

4 - Title 18.2 (Crimes)

5 - Titles 22.1 (Education) and 23.1 (Institutions of Higher Education)

6B - Titles 40.1 (Labor and Employment) to 45.1 (Mines)

Vol	Title	Subject	Edition	BV pp*	20 CS	%	Lexis*	Replacement Candidates
1	1-2.2	Gen. Prov., Adm. of Govt.	2017	1187	432	36.4%	1283	Maybe 6 - Stand alone
1A	3.2	Agriculture	2016	550	114	20.7%	585	
1B	4.1-6.2	Alcoholic Bev. -- Financial Institutions	2016	747	332	44.4%	953	3-5 Stand alone
2	8.01	Civil Remedies & Procedure	2015	1386	260	18.8%	1520	
2A	8.1-8.11	UCC	2015	1029	28	2.7%	1037	
2B	9-10.1	Commissions -- Conservation	2018	690	132	19.1%	718	
3	11-14.1	Contracts to Corporations	2016	677	322	47.6%	833	3-5 Stand alone
3A Part 1	15.2 Part 1	Counties, Cities, and Towns	2018	916	171	18.7%	959	
3A Part 2	15.2 Part 2	Counties, Cities, and Towns	2018	511	82	16.0%	540	
3B	16.1-17.1	Courts	2020	783		0.0%		
4	18.2	Crimes	2014	1197	401	33.5%	1415	2 - Stand alone and 2014
4A	19.2	Criminal Procedure	2015	796	301	37.8%	926	
4B	20, 21	Domestic Relations, Drainage	2016	722	147	20.4%	779	
5	22.1, 23	Education -- Eminent Domain	2016	780	387	49.6%	940	3-5 Stand alone
5A	24.2-28.2	Elections - Fiduciaries	2016	737	239	32.4%	795	
5B	29.1-32.1	Wildlife to Health	2018	939	226	24.1%	986	
6	33.2-37.2	Highways -- Mental Health	2019	1005	176	17.5%	1049	
6A	38.2	Insurance	2020	1359		0.0%		
6B	40.1-45.1	Labor & Employment -- Mines & Mining	2013	655	181	27.6%	711	1- This one is a must because of the 2021 Recod. Ships September, effective 10/1/21
7	46.2	Motor Vehicles	2017	1177	314	26.7%	1243	
7A	47.1 - 53.1	Notaries to Prisons	2020	815		0.0%		
7B	54.1	Professions	2019	842	155	18.4%	877	

8	55.1-57	Property -- Religious & Charitable Matters	2019	1286	200	15.6%	1345	
8A	58.1	Taxation	2017	1231	478	38.8%	1386	Maybe 6 - Stand alone
9	59.1-62.1	Trade -- Waters	2019	1303	133	10.2%	1343	
9A	63.2-64.2	Welfare -- Wills Trusts & Estates	2017	911	266	29.2%	997	
9B	65.2-67	Workers' Compensation -- Energy	2017	784	82	10.5%	813	
10		Tables	2015	691	59	8.5%	732	
11		Rules	2017	n/a	n/a	n/a		
12		Index	2017	n/a	n/a	n/a		
13		Index	2017	n/a	n/a	n/a		
Const.		Consts.	2020	385		0.0%		
LEO1		LEO/UPL	2002	631	62	9.8%	643	
LEO2		LEO/UPL	2013	955	109	11.4%	1001	

Item 3 - Recodification of Title 45.1

Title 45.1 Recodification: Outline 9/30/2020

Underlined text indicates proposed chapter or article number.

Subtitle I. Administration.

Ch. 1. Administration.

Article 1. Administration. Chapter 14.1 Administration (§§ 45.1-161.1 through 45.1-161.6).

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

Ch. 2. Chapter 20 Interstate Mining Compact (§ 45.1-271).

Ch. 3. Chapter 24 Interstate Compact to Conserve Oil and Gas (§§ 45.1-381 through 45.1-382).

Ch. 4. Presumptions Regarding Ownership. Chapter 14.7:3. Mineral Rights (§§ 45.1-161.311:9 through 45.1-161.311:11). Added to Title 45.1 in 2019 by Title 55.1 recodification.

Subtitle II. Coal Mining.

Part A. Coal Mines Generally.

Ch. 5. Chapter 14.2 Coal Mine Safety Act (§§ 45.1-161.7 through 45.1-161.104). Contains definitions section for chapters 5, 7, 8, 9.

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

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

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

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

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

Part B. Underground Coal Mines.

Ch. 7. Portion of Chapter 14.3 Requirements Applicable to Underground Coal Mines (§§ 45.1-161.105 through 45.1-161.252) [Articles 1-3, 5-8, 15, and 16].

Ch. 8. Portion of Chapter 14.3 Requirements Applicable to Underground Coal Mines (§§ 45.1-161.105 through 45.1-161.252) [Articles 4 and 9-14].

Part C. Surface Coal Mines.

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

Article 1. General Provisions.

Article 2. Work Area Examinations, ~~Record Keeping~~ Recordkeeping, and Reporting.

Article 3. Personal Protection.

Article 4. First Aid Equipment; Medical Care; Emergency Medical Services Providers.

Title 45.1 Recodification: Outline 9/30/2020

Article 5. Fire Prevention and Fire Control.

Article 6. Surface Equipment.

Article 7. ~~Travelways~~, [Travel Ways and](#) Loading and Haulage Areas.

Article 8. Dust Control.

Article 9. Electricity.

Article 10. Explosives and Blasting.

Article 11. Ground Control.

Article 12. Auger and Highwall Mining.

Article 13. Proximity of Mining to Gas; [or](#) Oil Wells ~~and~~ [or](#) Vertical Ventilation Holes.

[Ch. 10.](#) Chapter 19 Virginia Coal Surface Mining Control and Reclamation Act of 1979 (§§ 45.1-226 through 45.1-270.7) [§ 45.1-227 not set out].

Article 1. General and Administrative Provisions.

Article 2. Regulation of Mining Activity.

Article 3. ~~Miscellaneous Provisions~~ [National Pollutant Discharge Elimination System Permit; Replacement of Water Supply.](#)

Article 4. Abandoned Mine Reclamation.

Article 5. Coal Surface Mining Reclamation Fund.

Subtitle III. Mineral Mines.

Part A. Mineral Mines Generally.

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

[Ch. 12.](#) Chapter 16 Permits for Certain Mining Operations; Reclamation of Land (§§ 45.1-180 through 45.1-197.18).

[Ch. 13. Mineral Mining Dams and Adjacent Owners.](#)

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

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

Part B. Underground Mineral Mines.

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

Part C. Surface Mineral Mines.

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

Subtitle IV. Gas and Oil.

[Ch. 16.](#) The Virginia Gas and Oil Act

[Articles 1-3.](#) Articles 1-3 of Chapter 22.1 The Virginia Gas and Oil Act (§§ 45.1-361.1 et seq.)

Title 45.1 Recodification: Outline 9/30/2020

[Article 4.](#) §§ 62.1-195.1 and 62.1-195.3. Chesapeake Bay, oil or gas drilling; Tidewater; hydraulic fracturing.

[Article 5.](#) Article 4 of Chapter 22.1 The Virginia Gas and Oil Act (§§ 45.1-361.43 and 45.1-361.44).

Subtitle V. Other Sources of Energy; Energy Policy.

[Ch. 17. Energy Generally.](#)

[Article 1. General Provisions.](#) § 67-200 Definitions and Chapter 26 Energy Division, Etc. (§ 45.1-390).

[Article 2.](#) Chapter 6.1. Energy and Operational Efficiency Performance-Based Contracting Act (§§ 11-34.1 through 11-34.4).

[Article 3.](#) **Title 67** Ch. 1 Energy Policy of Comm. (§§ 67-100 through 67-103).

[Article 4.](#) **Title 67** Chapter 2 Virginia Energy Plan (§§ 67-200 through 67-203).

[Article 5.](#) **Title 67** Ch. 6 Va. Coastal Energy Research Consortium (§§ 67-600 through 67-604)

[Article 6.](#) **Title 67** Ch. 16 Southwest Virginia Energy Research and Development Auth. (§§ 67-1600 through 67-1607).

[Ch. 18. Wind Energy.](#)

[Article 1. General Provisions.](#)

[§ 45.2-xxx. Definitions.](#)

Title 67 Chapter 3 Offshore Energy Resources (§ 67-300).

§ 45.1-161.5:1. Division of Offshore Wind.

[Article 2.](#) **Title 67** Chapter 12 Virginia Offshore Wind Development Authority (§§ 67-1200 through 67-1211).

[Ch. 19. Solar Energy.](#)

[Article 1.](#) Virginia Solar Energy Center.

§§ 45.1-391.

[Article 2.](#) **Title 67** Ch. 15 Virginia Solar Energy Development and Energy Storage Authority (§§ 67-1500 through 67-1509).

[Article 3.](#) Ch. 27 Clean Energy Advisory Board (§§ 45.1-395 through 45.1-400).

[Ch. 20. Geothermal Energy.](#)

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

[Ch. 21. Nuclear Energy.](#)

Title 67 Chapter 14 Virginia Nuclear Energy Consortium (§§ 67-1400 through

Title 45.1 Recodification: Outline 9/30/2020

67-1406).

Title 67 Chapter 17 Nuclear Energy Planning (§ 67-1700).

Title 45.1 Chapter 21 Article 1 Exploration for Uranium Ore (§§ 45.1-272 through 45.1-285) [§ 45.1-272 not set out].

Article deleted from Title 45.1.

Title 45.1 Chapter 21 Article 2 Uranium Administrative Group; Functions (§§ 45.1-285.1 through 45.1-285.10), enacted by Acts 1983, c. 3 and currently not set out, will be deleted as unnecessary because the Uranium Administrative Group created by the article was required by § 45.1-285.5 to submit its report by December 1, 1983.

Title 45.1 Recodification: Outline 9/30/2020

Title 67

Title 67 chapters proposed for incorporation into titles *other than* Title 45.2.

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

We propose to move to new Article 5 in Chapter 13 of Title 10.1, comprising new §§ 10.1-1332 and 10.1-1333.

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

We propose to combine the two sections into one new section numbered 33.2-221.1 and move to Article 2 of Chapter 2 of Title 33.2.

Title 67 Chapter 7 Covenants Restricting Solar Energy Collection Devices (§§ 67-700 through 67-701). Includes amendments by c. 272 (2020).

We propose to combine the two sections into one new section and move to three places in Subtitle IV of Title 55.1 (Property and Conveyances) as proposed §§ 55.1-1820.1 in Chapter 18, 55.1-1951.1 in Chapter 19, and 55.1-2133.1 in Chapter 21.

Title 67 Chapter 8 Motor Vehicle Fuel Efficiency Standards (§§ 67-800 through 67-801).

We propose to combine the two sections into one new section numbered 33.2-120 and move to Chapter 1 of Title 33.2.

Title 67 Chapter 11 Renewable Energy Co-Location of Distribution Facilities (§§ 67-1100 through 67-1110). Contingent effective date. Amended in 2020.

We propose to move to new Chapter 29 in Title 56, comprising new §§ 56-614 through 56-624.

Title 67 chapters proposed for repeal.

Title 67 Ch. 9 Renewable Electricity Production Grant Program (§§ 67-900 through 67-903). Effectiveness contingent on funding; has not become effective since enactment in 2006.

Title 67 Ch. 10 Solar and Wind Energy System Acquisition Grant Program (§§ 67-1000 through 67-1003). Effectiveness contingent on funding; has not become effective since enactment in 2006.

Title 67 chapter that is expired and will be repealed.

Title 67 Chapter 13 Voluntary Solar Resource Development Fund [Expired] (§§ 67-1300 through 67-1305).

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MEMBERS OF THE VIRGINIA CODE COMMISSION

Senator John S. Edwards, Chairman

Delegate Marcus B. Simon, Vice-Chairman

Senator Jennifer L. McClellan

Delegate Don L. Scott, Jr.

The Honorable Malfourd W. Trumbo

The Honorable Ward L. Armstrong

The Honorable Leslie L. Lilley

The Honorable Charles S. Sharp

Nicole S. Cheuk

Christopher R. Nolen

Rita Davis

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COMMONWEALTH of VIRGINIA

Senator John S. Edwards
Chairman

VIRGINIA CODE COMMISSION
Pocahontas Building

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Richmond, Virginia 23219
(804) 698-1883

*Report of the
Virginia Code Commission
The Revision of Title 45.1 of the Code of Virginia*

**Richmond, Virginia
November 2020**

**To: The Honorable Ralph S. Northam, Governor of Virginia
and
The General Assembly of Virginia**

In accordance with its authority granted pursuant to § 30-152 of the Code of Virginia, the Virginia Code Commission (the Commission) undertook the revision of Title 45.1 (Mines and Mining) in May 2018. Since the title has not been revised since 1966 and there was a major revision of the Mine Safety Act in 1994 in which the original 15 chapters of Title 45 were repealed and new chapters were adopted, the current revision presents an opportunity to (i) organize the laws in a more logical manner, (ii) remove obsolete and duplicative provisions, and (iii) improve the structure and clarity of statutes pertaining to mines, minerals, and energy in the Commonwealth. The current revision also presents an opportunity to include in the proposed title additional laws dealing with the closely related subject matter of energy policy currently in nine chapters of Title 67 (Virginia Energy Plan) and to move the five remaining chapters of Title 67 to other titles in the Code more appropriate for their subject matter.

The Commission was assisted by a work group composed of Brandon Bull, Department of Environmental Quality; Harry Childress, Virginia Coal and Energy Alliance; David W. Clarke, Virginia Oil and Gas Association; Larry Corkey, Department of Mines, Minerals and Energy; Carroll Courtenay, Southern Environmental Law Center; Kristin Davis, Southern Environmental Law Center; Angela Jenkins, Department of Environmental Quality; Patrick McCrady, Titan America; Miles Morin, Virginia Petroleum Council; Doug Palmore, Luck Companies; and Michael Skiffington, Department of Mines, Minerals and Energy.

The contributions of the work group were invaluable, and the Commission wishes to express its sincere gratitude to the members of the work group for the significant time and effort

they devoted to the revision of Title 45.1. These contributors represent a cross section of stakeholders and interested groups, and their expertise proved to be a key resource for the Commission and its staff.

The Commission recommends that the General Assembly enact legislation during the 2021 Session to implement the revisions proposed in this report.

Respectfully submitted,

Senator John S. Edwards, Chairman

Delegate Marcus B. Simon, Vice-Chairman

Senator Jennifer L. McClellan

Delegate Don L. Scott, Jr.

The Honorable Malfourd W. Trumbo

The Honorable Ward L. Armstrong

The Honorable Leslie L. Lilley

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EXECUTIVE SUMMARY

Introduction

Title 45.1 (Mines and Mining) contains provisions of the Code of Virginia that address mining, drilling, and energy-related matters in the Commonwealth, including the mining of coal, the mining of minerals, the drilling of gas and oil wells, exploration for uranium ore, geothermal energy, and solar energy. Closely related to these provisions are the laws establishing an energy policy for the Commonwealth, addressing topics that include offshore and coastal energy, that can be found in certain chapters of Title 67 (Virginia Energy Plan).

Title 45.1 has not been completely revised since 1966, at which time the title consisted of 15 chapters. In the ensuing 54 Regular Sessions of the General Assembly, 29 chapters have been added and 20 have been repealed, including the 15 original chapters, which were repealed in a 1994 revision of the Mine Safety Act. The result is the existing title, which comprises 24 current chapters. Neither the one chapter nor either of the two sections that is relocated from Titles 11 and 62.1 to the current revision was in existence when the Code of 1950 was adopted. In the years intervening since 1966, the original organizational scheme has been compromised by the insertion of new chapters within or at the end of the title and by the insertion of new sections within or at the end of existing chapters, often with cumbersome section numbers.

Title 67 was created in 2006 and initially consisted of 10 chapters. Later sessions of the General Assembly added seven chapters for a total of 17 chapters. One chapter of Title 67 has expired since 2006, and two have failed to become effective since their enactment in 2006. Of the 14 other chapters currently in Title 67, nine relate to topics covered in Title 45.1 and would be appropriately located in a revision of Title 45.1. The other five chapters remaining in Title 67 would be more appropriately located in other titles of the Code of Virginia that correspond to their subject matters.

It has become appropriate to (i) organize the laws in a more logical manner, (ii) remove obsolete and duplicative provisions, and (iii) improve the structure and clarity of statutes pertaining to mines, minerals, and energy in the Commonwealth.

Organization of Proposed Title 45.2

Title 45.1 is renamed from Mines and Mining to Mines, Minerals, and Energy in the proposed title to more accurately describe the proposed title's scope. Title 67 (Virginia Energy Plan) is repealed in its entirety and its chapters are relocated to proposed Title 45.2 and other titles of the Code of Virginia as appropriate.

Proposed Title 45.2 consists of 21 chapters that are drawn from both existing Title 45.1 and existing Title 67 and are divided into five proposed subtitles: Subtitle I (Administration), Subtitle II (Coal Mining), Subtitle III (Mineral Mines), Subtitle IV (Gas and Oil), and Subtitle V (Other Sources of Energy; Energy Policy).

Subtitle I (Administration) contains proposed Chapters 1 through 4, all of which pertain to the administration of the mines, minerals, and energy laws of the Commonwealth.

Proposed Chapter 1 (Administration) includes provisions relating to the Department of Mines, Minerals and Energy. It contains existing Chapters 14.1 (Administration) and 25 (Division of Geology and Mineral Resources).

Proposed Chapter 2 (Interstate Mining Compact) contains provisions found in existing Chapter 20 of the same name and is an interstate compact with 15 other states that became effective in Virginia in 1977 and addresses the conservation and use of mined land.

Proposed Chapter 3 (Interstate Compact to Conserve Oil and Gas) contains the provisions from existing Chapter 24 of the same name and is an interstate compact with 14 other states that became effective in Virginia in 1982 and addresses the conservation of oil and gas by preventing the physical waste of such substances.

Proposed Chapter 4 (Presumptions Regarding Ownership) contains the provisions of existing Chapter 14.7:3 (Mineral Rights), which addresses presumptions regarding ownership of underground substances including coal, minerals, gas, and oil.

Subtitle II (Coal Mining) contains proposed Chapters 5 through 10, relating to coal mining. The subtitle is divided into three parts: Part A (Coal Mines Generally), containing proposed Chapters 5 and 6; Part B (Underground Coal Mines), containing proposed Chapters 7 and 8; and Part C (Surface Coal Mines), containing proposed Chapters 9 and 10.

Proposed Chapter 5 (Coal Mine Safety Act) contains the provisions of existing Chapter 14.2 of the same name, which governs the safe operation of surface and underground coal mines.

Proposed Chapter 6 (Coal Mining Property, Interests, Adjacent Owners, and Dams) contains several miscellaneous provisions found in existing Chapters 14.7 (Rights of Owners of Land Adjacent to Coal Mines), 14.7:2 (Trust for Coal Interests), 14.8 (Emergency Seizure of Coal Properties by Commonwealth), and 18 (Coal Mining Refuse Piles, Water and Silt Retaining Dams), all of which pertain to matters related to the mining of coal. The topics in the proposed chapter include the rights of an owner of land adjacent to a coal mine; the establishment of a trust for a missing owner of an interest in coal that is being produced; the seizure and operation by the Commonwealth of a coal business under certain circumstances; and the design, construction, and operation of certain retaining dams at coal mines.

Proposed Chapter 7 (Requirements Applicable to Underground Coal Mines; Mine Construction) contains Articles 1, 2, 3, 5 through 8, 15, and 16 of existing Chapter 14.3 (Requirements Applicable to Underground Coal Mines), pertaining to duties of miners; proximity of mining to gas or oil wells; roof, face, and rib control; explosives and blasting; mine openings and escapeways; hoisting; transportation; and surface areas.

Proposed Chapter 8 (Requirements Applicable to Underground Coal Mines; Electricity, Safety, Etc.) contains Articles 4 and 9 through 14 of existing Chapter 14.3 (Requirements Applicable to Underground Coal Mines), pertaining to mechanical equipment; electricity; fire prevention and control; ventilation, mine gases, and other hazardous conditions; personal safety and smoking; and first aid equipment, medical care, and emergency medical services providers.

Proposed Chapter 9 (Requirements Applicable to Surface Coal Mines) contains the provisions of existing Chapter 14.4 of the same name, pertaining to general provisions; work area examinations, recordkeeping, and reporting; personal protection; first aid equipment, medical care, and emergency medical services providers; fire prevention and control; surface equipment; travel ways and loading and haulage areas; dust control; electricity; explosives and blasting; ground control; auger and highwall mining; and proximity of mining to gas or oil wells or vertical ventilation holes.

Proposed Chapter 10 (Virginia Coal Surface Mining Control and Reclamation Act of 1979) contains the provisions of existing Chapter 19 of the same name. The topics in the proposed chapter include general and administrative provisions; regulation of mining activity; National Pollutant Discharge Elimination System Permit; replacement of water supply; abandoned mine reclamation; and the Coal Surface Mining Reclamation Fund.

Subtitle III (Mineral Mines) contains proposed Chapters 11 through 15, all of which pertain to the operation of mineral mines in the Commonwealth. The subtitle is divided into three parts: Part A (Mineral Mines Generally), containing proposed Chapters 11, 12, and 13; Part B (Underground Mineral Mines), containing proposed Chapter 14; and Part C (Surface Mineral Mines), containing proposed Chapter 15.

Proposed Chapter 11 (Mineral Mine Safety Act) contains the provisions of existing Chapter 14.4:1 of the same name, which provides for the appointment of the Director of the Department of Mines, Minerals and Energy and of mining inspectors, the certification of mineral mine workers, the licensing of mineral mines, and the establishment of mine rescue teams; and includes the topics of mine explosions, fires, and accidents; mine inspections; enforcement of mining laws and penalties and reports of violations; and miner training.

Proposed Chapter 12 (Permits for Certain Mining Operations; Reclamation of Land) contains the provisions of existing Chapter 16 of the same name, which governs the regulation of mining activity, orphaned lands, and the Minerals Reclamation Fund.

Proposed Chapter 13 (Mineral Mining Dams; Adjacent Owners) contains the provisions of existing Chapters 14.7:1 (Rights of Owners of Land Adjacent to Mineral Mines) and 18.1 (Mineral Mining Refuse Piles, Water and Silt Retaining Dams), which deal with the rights of adjacent land owners and the regulation of mineral mining retaining dams and refuse piles, respectively.

Proposed Chapter 14 (Requirements Applicable to Underground Mineral Mines) contains the provisions of existing Chapter 14.5 of the same name, which governs the regulation of underground mineral mines in the Commonwealth and mining in proximity to gas and oil wells, as well as the use of flame safety lamps.

Proposed Chapter 15 (Requirements Applicable to Surface Mineral Mines) contains the provisions of existing Chapter 14.6 (Requirements Applicable to Surface Mineral Mining), which governs the regulation of surface mineral mining in the Commonwealth, as well as mining in proximity to gas and oil wells, health regulations, and respiratory equipment.

Subtitle IV (Gas and Oil) contains proposed Chapter 16 (Virginia Gas and Oil Act), which contains the provisions of existing Chapter 22.1 (The Virginia Gas and Oil Act) governing gas

and oil conservation and regulation of gas and oil development and production. In addition, two existing sections found in Title 62.1 (§§ 62.1-195.1 and 62.1-195.3), which govern gas and oil drilling in the Chesapeake Bay and Tidewater Virginia and certain uses of hydraulic fracturing, are relocated to proposed Chapter 16.

Subtitle V (Other Sources of Energy; Energy Policy) contains proposed Chapters 17 through 21, pertaining to other sources of energy, including wind, solar, geothermal, and nuclear, and to the energy policy of the Commonwealth.

Proposed Chapter 17 (Other Sources of Energy Generally) contains the provisions of existing Chapter 26 (Energy Division, Etc.), a one-section chapter, to which the provisions of a definitions section from Title 67 (§ 67-200) has been added. The proposed chapter also contains several provisions from other titles of the Code of Virginia. It includes existing Chapter 6.1 of Title 11 (Energy and Operational Efficiency Performance-Based Contracting Act), which is administered by the Department of Mines, Minerals and Energy and addresses investment in energy conservation measures and facility technology infrastructure upgrades and modernization in facilities owned by state and local government, as well as four chapters from Title 67: existing Chapters 1 (Energy Policy of the Commonwealth) and 2 (Virginia Energy Plan), which establish policies for the Commonwealth and require a plan to carry them out; existing Chapter 6 (Virginia Coastal Energy Research Consortium), which establishes a research entity dealing with coastal energy issues; and existing Chapter 16 (Southwest Virginia Energy Research and Development Authority), which establishes an authority to promote opportunities for energy development in Southwest Virginia.

Proposed Chapter 18 (Wind Energy) contains existing § 45.1-161.5:1, which establishes the Division of Offshore Wind within the Department of Mines, Minerals and Energy, as well as the provisions of two chapters from Title 67: existing Chapter 3 (Offshore Wind Energy Resources), a one-section chapter that states the policy of the Commonwealth regarding offshore wind energy, and existing Chapter 12 (Virginia Offshore Wind Development Authority), which establishes an authority to support the development of the offshore wind energy industry.

Proposed Chapter 19 (Solar Energy) contains the provisions of existing § 45.1-391, establishing the Virginia Solar Energy Center in the Department of Mines, Minerals and Energy; existing Chapter 15 (Virginia Solar Energy Development and Energy Storage Authority) of Title 67, which creates an authority to support the development of the solar energy and energy storage industries; and existing Chapter 27 (Clean Energy Advisory Board) of Title 45.1, which establishes an advisory board for the purpose of starting a pilot program for disbursing loans or rebates for the installation of solar energy infrastructure in low-income and moderate-income households.

Proposed Chapter 20 (Geothermal Energy) contains the provisions of existing Chapter 15.1 of the same name, which fosters the development of geothermal resources, prevents waste of such resources, and carries out other policies related to geothermal resources.

Proposed Chapter 21 (Nuclear Energy) contains the provisions of existing Chapter 21 (Exploration for Uranium Ore), which promotes the safe and efficient exploration for uranium resources within the Commonwealth and ensures that uranium mining and milling will be subject to statutes and regulations that protect the environment and the

health and safety of the public. The proposed chapter also contains the provisions of two chapters from Title 67: existing Chapters 14 (Virginia Nuclear Energy Consortium), which establishes the Virginia Nuclear Energy Consortium Authority to promote the Commonwealth as a leader in nuclear energy and to serve as an interdisciplinary information resource on nuclear energy issues, and 17 (Nuclear Energy Planning), a one-section chapter that directs the development of a strategic plan for nuclear energy as part of the Commonwealth's overall goal of carbon-free energy.

Statutory Provisions Proposed for Repeal

During the revision process, the Virginia Code Commission became aware of a number of existing sections and two existing chapters that are either unnecessary or obsolete and have been stricken in this report; these are recommended for repeal and thus not included in the proposed title. Chapter drafting notes in the body of the report describe the reasons for the recommended repeal of the following sections and chapters:

- §§ 11-34.1, 45.1-179.1, 45.1-226, 45.1-227, 45.1-228, 45.1-272, 45.1-285.1 through 45.1-285.10, and 67-1206 (individual sections scattered throughout, usually short titles or legislative findings).
- Chapter 9 (§§ 67-900 through 67-903) of Title 67
- Chapter 10 (§§ 67-1000 through 67-1003) of Title 67

Other Affected Titles

No provision of existing Title 45.1 is proposed for relocation to another title of the Code of Virginia.

The following chapters are relocated from existing Title 67 to other titles of the Code of Virginia:

- Chapter 4 (§ 67-400 et seq.) (Clean Coal Projects), a chapter containing two effective sections, is combined into a single section and relocated as proposed Article 5 (§ 10.1-1332) of Chapter 13 of Title 10.1 (Conservation).
- Chapter 5 (§ 67-500 et seq.) (Biodiesel Fuel), a two-section chapter, is combined into a single section and relocated as proposed § 33.2-221.1 in Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2. (Highways and Other Surface Transportation Systems).
- Chapter 7 (§ 67-700 et seq.) (Covenants Restricting Solar Energy Collection Devices), a two-section chapter, is combined into a single section and relocated to three places in Subtitle IV of Title 55.1 (Property and Conveyances) as proposed § 55.1-1820.1 in Chapter 18, proposed § 55.1-1951.1 in Chapter 19, and proposed § 55.1-2133.1 in Chapter 21, so that the section applies to the Property Owners' Association Act, the Virginia Condominium Act, and the Virginia Real Estate Cooperative Act.
- Chapter 8 (§ 67-800 et seq.) (Motor Vehicle Fuel Efficiency Standards), a two-section chapter, is combined into a single section and relocated as proposed § 33.2-120 in Chapter 1 (§ 33.2-100 et seq.) of Title 33.2 (Highways and Other Surface Transportation Systems).

- Chapter 11 (§ 67-1100 et seq.) (Renewable Energy Co-Location of Distribution Facilities) is relocated as Chapter 29 (§ 56-614 et seq.) of Title 56 (Public Service Companies).

The following provisions are relocated from other titles of the Code of Virginia to proposed Title 45.2:

- The provisions of existing § 62.1-195.1, which deals with drilling for gas or oil in (i) the waters of the Chesapeake Bay or (ii) Tidewater Virginia, are moved to proposed §§ 45.2-1645 and 45.2-1646, respectively, of proposed Chapter 16 (Virginia Gas and Oil Act).
- The provisions of existing § 62.1-195.3, which deals with hydraulic fracturing in a groundwater management area, are moved to proposed § 45.2-xxx of proposed Chapter 16 (Virginia Gas and Oil Act).
- The provisions of existing Chapter 6.1 (§ 11-34.1 et seq.) of Title 11, comprising the Energy and Operational Efficiency Performance-Based Contracting Act, are moved to proposed Article 2 (§ 45.2-xxx et seq.) of Chapter 17 (Other Sources of Energy Generally). The first section of the chapter is repealed as noted above.

The relocation of sections, articles, and chapters to other titles of the Code of Virginia is not intended to have any substantive effect on their interpretation.

An outline of the organization of proposed Title 45.2 is included as Appendix A.

Technical Changes Made Throughout Title 45.2

Each section is followed by a drafting note describing any changes made in the section. If a section drafting note states "no change," the section contains no changes other than renumbering the section. If a drafting note states "technical changes," the section contains technical changes to the text ranging from the insertion of clarifying punctuation to a thorough modernization of archaic writing style. When a section contains structural or substantive changes, such as the deletion or addition of language, the drafting note describes the reason for the proposed change.

Many of the technical changes arise from the Code Commission's determination that terminology should be clear, consistent, and modern. The following list provides a representative sample of the most significant and most widely implemented technical changes made in the proposed title.

The following technical changes are made in order to maintain consistency with changes made in previous title revisions, to update antiquated language, to provide clarity, and to bring Title 45.2 into accordance with Title 1 rules of construction for the Code:

- § 1-218. Includes. "Includes" means includes, but not limited to.
- § 1-227. Number. A word used in the singular includes the plural, and a word used in the plural includes the singular.
- § 1-244. Short title citations. Short titles have been eliminated as unnecessary in light of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article operates as a short title citation.

- Purpose statements and legislative findings have been stricken in accordance with the Code Commission's policy that purpose statements and legislative findings do not have general and permanent application and thus are not to be included in the Code.
- Nonreverting fund language is updated to reflect current language requested by the Department of the Treasury for such funds in the Code.
- The corporate language for authorities and advisory boards is updated to reflect current language for political subdivisions in the Code.
- Provisions establishing the initial staggering of terms for the members of corporate bodies are removed.

The following changes are made to remove and update antiquated terminology or clarify terms with general application, in accordance with Code Commission policies:

- To the extent feasible, several sets of clauses within paragraphs are labeled for the sake of clarity.
- To the extent feasible, "shall be" is stricken in favor of "is."
- To the extent feasible, phrases in the passive voice are changed to the active voice.
- When grammatically feasible, "will" or "must" is changed to "shall" or other appropriate term.
- When grammatically feasible, prohibitory language is recast in affirmative form.
- "Virginia" is replaced with "the Commonwealth."
- "This Commonwealth" is replaced with "the Commonwealth."
- To the extent feasible, unclear references to "herein," "therefor," "thereof," and "thereon" are replaced with more specific references.
- Definitions are moved to the beginning of the section, article, chapter, etc., to provide the reader better clarity and context.
- In the context of the regulations of an administrative agency, the word "promulgate" is replaced with the word "adopt" because "adopt" is more widely used and includes the promulgation process.
- In the context of an administrative agency adopting regulations, the word "rules" is stricken prior to the word "regulations" because an administrative agency adopts regulations, not rules.
- § 1-221. Locality. "Locality" means a county, city, or town as the context may require.
- "Shall have the authority to" and similar variants of this term are changed to "may."
- House and Senate committee names that were changed in the 2020 Session of the General Assembly are updated.
- When the meaning of the text requires it and in accordance with title-wide conventions, the conjunction "and" is replaced with "or" because the meaning of "or" encompasses both "or" and "and."

The following technical changes are made or not made, as the case may be, throughout proposed Title 45.2 and apply more specifically to the subject matter found in this title:

- Obsolete date references are deleted, including obsolete deadlines and references to dates associated with the approval of state primacy by the federal government on December 15, 1981, and the adoption by Virginia of a mining regulatory program. Sections from which dates related to state primacy are deleted include proposed §§ 45.2-1000, 45.2-1001, 45.2-1017, and 45.2-1030. Six particular sections that authorized the adoption of interim regulations prior to state primacy, §§ 45.1-161.298 through 45.1-161.303, are significantly reduced and combined as proposed § 45.2-1402.
- Date references are clarified, including by the substitution of the enactment date of proposed § 45.2-1621 for a reference to the date of "the enactment of this provision." Unclear or ambiguous references to time periods, such as "more than six months" in proposed § 45.2-500 or "additional two-year periods" in proposed § 45.2-2118, are rephrased for clarity.
- Obsolete references to agencies, organizations, and standards are updated. In proposed Chapters 5 (§ 45.2-xxx et seq.) and 21 (§ 45.2-xxx et seq.), outdated references to the Chief of the Division of Mines, predating the formation of the Department in 1985, are changed to refer to the Director of the Department.
- Terms are updated to those currently in use by the Department, including by changing "certificate of inspection" to "inspection report" in proposed § 45.2-566 and by changing "mine rescue crew" to "mine rescue team" throughout proposed Article 5 (§ 45.2-544 et seq.) of Chapter 5 and proposed Article 5 (§ 45.2-1133 et seq.) of Chapter 11.
- Terms for mining-related devices and practices are updated to reflect changes. In proposed § 45.2-549, a reference to the depletion of the atmospheric pressure of a breathing apparatus is replaced with a reference to the safety standard currently in use, a low-oxygen alarm, while in proposed § 45.2-847, outdated references to methane indicators are removed as duplicative of references to methane detectors. Outdated provisions related to certain paper records are updated, including requirements for "a copy of parts of" certain maps in proposed §§ 45.2-707, 45.2-939, 45.2-1405, and 45.2-1503 that are clarified to require only "copies of" such maps. In proposed § 45.2-2112, the outdated requirement that an affidavit be submitted in triplicate is omitted and a mailing requirement is replaced by a requirement that a copy be "sent."
- References to the regulations of the Board of Coal Mining Examiners are expanded by adding references to the mining laws of the Commonwealth and vice versa. References to the authority of the Chief to make certain determinations are added in proposed §§ 45.2-561, 45.2-564, and 45.2-743.
- Outdated references in proposed §§ 45.2-615, 45.2-1040, 45.2-1041, 45.2-1219, and 45.2-1220 to courts of equity and to particular terms in equity pleading practice are updated to reflect the 2006 merger of common-law and equity pleading in Virginia.
- In subsection A of proposed § 45.2-708, "flammable gas" is replaced with "explosive or hazardous gas" for consistency with the reference in subsection B of proposed § 45.2-708 to "hazardous quantities of" certain gases.

- The term "miners" replaces "men" in proposed §§ 45.2-735 and 45.2-748 and "mantrip" is used instead of "man-trip" or "personnel carrier" in proposed §§ 45.2-754, 45.2-760, 45.2-761, and 45.2-762.
- Idiosyncratic or jargon terms are replaced with terms in broader use that are consistent with the rest of the title, including in proposed § 45.2-755, where the term "blocked or spragged" in reference to a standing car on a track is replaced with "blocked to prevent movement." In proposed § 45.2-928, the phrase "become 'alive' through failure" in reference to an electrical circuit is changed to "become electrified through failure." In proposed § 45.2-1100, the unique term "bodily injury" is replaced by the defined term "serious personal injury" and "individual" is replaced with "person." The term "fatality" is replaced with "death" in proposed § 45.2-1147.
- In proposed § 45.2-904, the text is clarified so that it cannot be read to allow an operator to convey the authority of a supervisor to another person.

Substantive Changes Proposed in Title 45.2

When the Virginia Code Commission has approved a substantive change to a provision of existing law, it is noted in the drafting note for the affected section. These substantive changes include the following:

- A substantive change is made in proposed § 45.2-107 to remove the requirement that the State Geologist "receive such compensation as may be provided in accordance with law" because such provision is unnecessary. All such appointed officers and employees receive compensation unless otherwise noted.
- The requirement in proposed § 45.2-110 that the United States Geological Survey expend at least as much money as the Department of Mines, Minerals and Energy when the two agencies work cooperatively is removed because it is obsolete.
- A list of localities west of the Blue Ridge Mountains that are subject to a presumption that no coal, minerals, ore, or oil exists in certain lands is deleted from proposed § 45.2-400 as an unconstitutional special law in violation of Article IV, Section 14(3) of the Constitution of Virginia pursuant to *H. D. Riddleberger, Jr., et al. v. Chesapeake Western Railway*, 229 Va. 213, 222 (1985).
- A substantive change is made to the prohibition on inspection by the Chief of the Division of Mines of the Department of Mines, Minerals and Energy or an inspector of a mine at which he "was last employed" for a period two years following employment in subsection B of proposed §§ 45.2-509 and 45.2-1107. The provision is changed to prohibit inspection of any mine at which the Chief or an inspector was ever employed during the two years prior to his employment with the Department.
- Substantive changes are made to the provisions setting out certain fees for mining and drilling licenses. The license fees for operation of a coal mine in proposed § 45.2-534, operation of a mineral mine in proposed § 45.2-1124, and conduct of oil drilling or related activities in proposed § 45.2-1631 are updated to reflect the current fees as established in the state budget adopted during the 2010 Session of the General Assembly and in each subsequent biennial budget.

- A provision requiring that an email address be included on a notice is added to proposed § 45.2-540.
- A substantive change in the requirements for construction of a surface magazine resolves an inconsistency by substituting "bullet-resistant," an accurate descriptive term that appears in subdivision B 1 of proposed §§ 45.2-719 and 45.2-931, for the term "bulletproof" as that term appears throughout both sections.
- In subsection A of proposed §§ 45.2-504 and 45.2-1104, references to a warning sign or barricade are added to a prohibition on entering a mine "against caution," while in proposed § 45.2-830 the requirement that an area "be dangered off" is replaced with a requirement that the area be "posted with conspicuous danger signs."
- In subsection D of proposed § 45.2-574, a provision stating that certain information is "excluded from access" under the Virginia Freedom of Information Act (FOIA) is replaced by a provision, using terms drawn from (FOIA), stating that such information is "exempt from disclosure." In subsection B of proposed § 45.2-1008, a prohibition against making certain information "available for public examination" is changed to prohibit disclosure of such information and to exempt such disclosure from FOIA.
- In proposed § 45.2-848, a provision allowing "any other" methane monitor to be disconnected is changed to clarify its reference only to a methane monitor that is not otherwise required by law.
- In subsection A of proposed § 45.2-1003, which authorizes the adoption of regulations in accordance with the Administrative Process Act and the Virginia Register Act, a substantive change is made by adding the proviso "unless otherwise directed by law" in order to accommodate any future exception contained in this title.
- A substantive change is made in proposed § 45.2-1130 by deleting the first sentence of existing subsection B, which exempts certain maps from a filing requirement. The deletion of the exemption reflects current Department of Mines, Minerals and Energy practice and removes a conflict with proposed § 45.2-1205, which requires that every mining permit application be accompanied by an accurate map of the area to be mined.
- In proposed § 45.2-1401, a requirement of adequate air quality is changed to also include air quantity.
- Consistent with current drafting practice, a substantive change is made in proposed § 45.2-2119 by adding a provision requiring that any civil penalties collected pursuant to proposed Article 3 (§ 45.2-xxx) of Chapter 21 be paid to a particular fund, in this case the Minerals Reclamation Fund.

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PROPOSED ENACTMENT CLAUSES TO TITLE 45.1 RECODIFICATION BILL

2. That whenever any of the conditions, requirements, provisions, or contents of any section or chapter of Title 45.1, Title 67, or any other title of the Code of Virginia as such titles existed prior to October 1, 2021, are transferred in the same or modified form to a new section or chapter of Title 45.2 or any other title of the Code of Virginia and whenever any such former section or chapter is given a new number in Title 45.2 or any other title, all references to any such former section or chapter of Title 45.1, Title 67, or any other title appearing in this Code shall be construed to apply to the new or renumbered section or chapter containing such conditions, requirements, provisions, contents, or portions thereof.

3. That the regulations of any department or agency affected by the revision of Title 45.1 or such other titles of the Code of Virginia in effect on the effective date of this act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations adopted under this act.

4. That the provisions of § 30-152 of the Code of Virginia shall apply to the revision of proposed Title 45.2 and repeal of Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia so as to give effect to other laws enacted by the 2021 Session of the General Assembly, notwithstanding the delay in the effective date of this act.

5. That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective as of October 1, 2021, shall not affect any act or offense done or committed, or any penalty incurred, or any right established, accrued, or accruing on or before such date, or any proceeding, prosecution, suit, or action pending on that day. Except as otherwise provided in this act, neither the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), § 62.1-195.1 or 62.1-195.3, or Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, nor the enactment of Title 45.2 shall apply to offenses committed prior to October 1, 2021, and prosecution for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this enactment, an offense was committed prior to October 1, 2021, if any of the essential elements of the offense occurred prior thereto.

6. That any notice given, recognizance taken, or process or writ issued before October 1, 2021, shall be valid although given, taken, or to be returned to a day after such date, in like manner as if Title 45.2 had been effective before the same was given, taken, or issued.

7. That if any clause, sentence, paragraph, subdivision, or section of Title 45.2 shall be adjudged in any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or section thereof directly involved in the controversy in which the judgment shall have been rendered, and to this end the provisions of Title 45.2 are declared severable.

8. That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective as of October 1, 2021, shall not affect the validity,

enforceability, or legality of any loan agreement or other contract, or any right established or accrued under such loan agreement or other contract, that existed prior to such repeal.

9. That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective October 1, 2021, shall not affect the validity, enforceability, or legality of any properly recorded deed that was recorded prior to such repeal.

10. That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective as of October 1, 2021, shall not affect the validity, enforceability, or legality of any bond or other debt obligation authorized, issued, or outstanding prior to such repeal.

11. That Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia are repealed.

12. That the provisions of this act shall not affect the existing terms of persons currently serving as members of any agency, board, authority, commission, or other entity and that appointees currently holding positions shall maintain their terms of appointment and continue to serve until such time as the existing terms might expire or become renewed. However, any new appointments made on or after October 1, 2021, shall be made in accordance with the provisions of this act.

13. That the provisions of this act shall become effective on October 1, 2021.

ORGANIZATION OUTLINE

Proposed Title 45.2.
Mines, Minerals, and Energy.

SUBTITLE I. ADMINISTRATION.

Chapter 1		Administration.
	Article 1	Department of Mines, Minerals and Energy.
	Article 2	Division of Geology and Mineral Resources.
Chapter 2		Interstate Mining Compact.
Chapter 3		Interstate Compact to Conserve Oil and Gas.
Chapter 4		Presumptions Regarding Ownership.

SUBTITLE II. COAL MINING.

PART A		COAL MINES GENERALLY.
Chapter 5		Coal Mine Safety Act.
	Article 1	General Provisions.
	Article 2	Chief of the Division of Mines of the Department and Mine Inspectors.
	Article 3	Certification of Coal Mine Workers.
	Article 4	Licensing for Operation of Coal Mines.
	Article 5	Mine Rescue Teams.
	Article 6	Mine Explosions; Mine Fires; Accidents.
	Article 7	Mine Inspections.
	Article 8	Enforcement and Penalties; Reports of Violations.
	Article 9	Virginia Coal Mine Safety Board.
	Article 10	Miner Training.
Chapter 6		Coal Mining Property, Interests, Adjacent Owners, and Dams.
	Article 1	Rights of Owners of Land Adjacent to Coal Mines.
	Article 2	Trusts for Coal Interests.
	Article 3	Emergency Seizure of Coal Property by the Commonwealth.
	Article 4	Coal Mine Refuse Impoundments and Retaining Dams.
PART B		UNDERGROUND COAL MINES.
Chapter 7		Requirements Applicable to Underground Coal Mines; Mine Construction.

	Article 1	General Provisions.
	Article 2	Additional Duties of Certified Persons and Other Miners.
	Article 3	Proximity of Mining to Gas or Oil Wells or Abandoned Areas.
	Article 4	Roof, Face, and Rib Control.
	Article 5	Explosives and Blasting.
	Article 6	Mine Openings and Escapeways.
	Article 7	Hoisting.
	Article 8	Transportation.
	Article 9	Surface Areas.
Chapter 8		Requirements Applicable to Underground Coal Mines; Electricity, Safety, Etc.
	Article 1	Mechanical Equipment.
	Article 2	Electricity.
	Article 3	Fire Prevention and Fire Control.
	Article 4	Ventilation, Mine Gases, and Other Hazardous Conditions.
	Article 5	Personal Safety; Smoking.
	Article 6	First Aid Equipment; Medical Care; Emergency Medical Services Providers.

PART C		SURFACE COAL MINES.
Chapter 9		Requirements Applicable to Surface Coal Mines.
	Article 1	General Provisions.
	Article 2	Work Area Examinations, Recordkeeping, and Reporting.
	Article 3	Personal Protection.
	Article 4	First Aid Equipment; Medical Care; Emergency Medical Services Providers.
	Article 5	Fire Prevention and Fire Control.
	Article 6	Surface Equipment.
	Article 7	Travel Ways and Loading and Haulage Areas.
	Article 8	Dust Control.
	Article 9	Electricity.
	Article 10	Explosives and Blasting.
	Article 11	Ground Control.
	Article 12	Auger and Highwall Mining.
	Article 13	Proximity of Mining to Gas or Oil Wells or Vertical Ventilation Holes.
Chapter 10		Virginia Coal Surface Mining Control and Reclamation Act of 1979.
	Article 1	General and Administrative Provisions.
	Article 2	Regulation of Mining Activity.

	Article 3	National Pollutant Discharge Elimination System Permit; Replacement of Water Supply.
	Article 4	Abandoned Mine Reclamation.
	Article 5	Coal Surface Mining Reclamation Fund.

SUBTITLE III. MINERAL MINES.

PART A		MINERAL MINES GENERALLY.
Chapter 11		Mineral Mine Safety Act.
	Article 1	General Provisions.
	Article 2	Director and Mining Inspectors.
	Article 3	Certification of Mineral Mine Workers.
	Article 4	Licensing of Mineral Mines.
	Article 5	Mine Rescue Teams.
	Article 6	Mine Explosions; Mine Fires; Accidents.
	Article 7	Mine Inspections.
	Article 8	Enforcement and Penalties; Reports of Violations.
	Article 9	Miner Training.
Chapter 12		Permits for Certain Mining Operations; Reclamation of Land.
	Article 1	General Provisions.
	Article 2	Regulation of Mining Activity.
	Article 3	Orphaned Lands.
	Article 4	Minerals Reclamation Fund.
Chapter 13		Mineral Mining Retaining Dams; Adjacent Owners.
	Article 1	Mineral Mining Retaining Dams and Refuse Piles.
	Article 2	Rights of Owners of Land Adjacent to Mineral Mines.

PART B		UNDERGROUND MINERAL MINES.
Chapter 14		Requirements Applicable to Underground Mineral Mines.

PART C		SURFACE MINERAL MINES.
Chapter 15		Requirements Applicable to Surface Mineral Mines.

SUBTITLE IV. GAS AND OIL.

Chapter 16		Virginia Gas and Oil Act.
	Article 1	General Provisions.
	Article 2	Gas and Oil Conservation.
	Article 3	Regulation of Gas and Oil Development and Production.

	Article 4	Drilling for Gas or Oil in the Chesapeake Bay or Tidewater Virginia; Hydraulic Fracturing.
	Article 5	Replacement of Water by Gas Well Operators.

**SUBTITLE V.
OTHER SOURCES OF ENERGY; ENERGY POLICY.**

Chapter 17		Other Sources of Energy Generally.
	Article 1	General Provisions.
	Article 2	Energy and Operational Efficiency Performance-Based Contracting Act.
	Article 3	Energy Policy of the Commonwealth.
	Article 4	Virginia Energy Plan.
	Article 5	Virginia Coastal Energy Research Consortium.
	Article 6	Southwest Virginia Energy Research and Development Authority.
Chapter 18		Wind Energy.
	Article 1	General Provisions.
	Article 2	Virginia Offshore Wind Development Authority.
Chapter 19		Solar Energy.
	Article 1	Virginia Solar Energy Center.
	Article 2	Virginia Solar Energy Development and Energy Storage Authority.
	Article 3	Clean Energy Advisory Board.
Chapter 20		Geothermal Energy.
	Article 1	General Provisions.
	Article 2	Resource Regulation.
Chapter 21		Nuclear Energy.
	Article 1	General Provisions.
	Article 2	Virginia Nuclear Energy Consortium Authority.
	Article 3	Exploration for Uranium Ore.

SUBTITLE V.

OTHER SOURCES OF ENERGY; ENERGY POLICY.

Drafting note: Proposed Subtitle V is created to logically organize provisions relating to wind energy, solar energy, geothermal energy, nuclear energy, and other sources of energy not related to coal, minerals, or gas and oil. Proposed Subtitle V contains five chapters: Chapter 17, (Other Sources of Energy Generally), Chapter 18, (Wind Energy), Chapter 19, (Solar Energy), Chapter 20, (Geothermal Energy), and Chapter 21, (Nuclear Energy).

CHAPTER 17.

OTHER SOURCES OF ENERGY GENERALLY; ENERGY POLICY.

Drafting note: Proposed Chapter 17 is composed of a new Article 1 with chapter-wide definitions and a portion of existing Chapter 26 (§ 45.1-390 et seq.) of Title 45.1; Chapter 6.1 (§ 11-34.1 et seq.) of Title 11 as Article 2; and Chapters 1 (§ 67-100 et seq.), 2 (§ 67-200 et seq.), 6 (§ 67-600 et seq.), and 16 (§ 67-1600 et seq.) of Title 67 as Articles 3 through 6, respectively. The proposed articles are as follows: Article 1 (General Provisions), Article 2 (Energy and Operational Efficiency Performance-Based Contracting Act), Article 3 (Energy Policy of the Commonwealth), Article 4 (Virginia Energy Plan), Article 5 (Virginia Coastal Energy Research Consortium), and Article 6 (Southwest Virginia Energy Research and Development Authority).

Article 1.

General Provisions.

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

~~§ 67-200~~ 45.2-1700. Definitions.

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

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

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

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

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

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

~~CHAPTER 26.~~

~~ENERGY DIVISION, ETC.~~

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

§ ~~45.1-390~~ [45.2-1701](#). Division of Energy established; ~~findings and policy~~; powers and duties.

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

B. The Division shall coordinate the energy-related activities of the various state agencies and advise the Governor on energy issues that arise at the local, state, and national levels. All state agencies and institutions shall cooperate fully with the Division to assist in the proper execution of the duties assigned by this section.

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

D. The Division shall:

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

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

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

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

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

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

Drafting note: Technical changes are made, including the addition of subsection designations. The first sentence of proposed subsection A containing a statement of legislative finding and policy is stricken in accordance with the Code Commission's policy that such statements do not have general and permanent application and thus are not to

be included in the Code. The phrase "Virginia businesses" is replaced with "businesses in the Commonwealth" and language is updated for modern usage.

~~§ 45.1-390.1. Repealed.~~

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

~~§ 45.1-392. Repealed.~~

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

~~§§ 45.1-393, 45.1-394. Repealed.~~

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

~~CHAPTER 6.1.~~

~~ENERGY AND OPERATIONAL EFFICIENCY PERFORMANCE-BASED CONTRACTING ACT.~~

Article 2.

Energy and Operational Efficiency Performance-Based Contracting Act.

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

~~§ 11-34.1. Legislative intent.~~

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

~~agreement for the purchase and installation of energy conservation and facility technology infrastructure upgrades and modernization.~~

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

§ ~~11-34.2~~ 45.2-1702. Definitions.

As used in this ~~chapter~~ article:

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

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

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

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

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

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

5. Replacement or ~~modifications~~ modification of lighting fixtures to increase the energy efficiency of the lighting system ~~which~~ Such replacement or modification shall, at a minimum, ~~shall~~ conform to the applicable provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ ~~11-34.3~~ 45.2-1703. Energy ~~Performance-Based Contract Procedures~~ performance-based contract procedures; required contract provisions.

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

B. The energy performance contractor shall be selected through competitive sealed bidding or competitive negotiation as set forth in § 2.2-4302.1 or 2.2-4302.2. The evaluation of the request for ~~proposal~~ proposals shall analyze the estimates of all costs of installation, maintenance, repairs, debt service, ~~post-installation~~ post-installation project monitoring, and reporting. Notwithstanding any other provision of law, any contracting entity may purchase

energy conservation or operational efficiency measures under an energy performance-based contract entered into by another contracting entity pursuant to this ~~chapter~~ [article](#) even if it did not participate in the request for proposals if the request for proposals specified that the procurement was being conducted on behalf of other contracting entities.

C. Before entering into a contract for energy conservation measures ~~and facility technology infrastructure upgrades and modernization measures~~, the contracting entity shall require the performance contractor to provide a payment and performance bond relating to the installation of energy conservation measures ~~and facility technology infrastructure upgrades and modernization measures~~ in ~~the~~ [an](#) amount the contracting entity finds reasonable and necessary to protect its interests.

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

E. The term of any energy performance-based contract shall expire at the end of each fiscal year but may be renewed annually [for](#) up to 20 years, subject to the contracting entity making sufficient annual appropriations based upon continued realized cost savings. Such ~~contracts~~ [contract](#) shall stipulate that the agreement does not constitute a debt, liability, or obligation of the contracting entity, or a pledge of the faith and credit of the contracting entity. Such contract may also provide capital contributions for the purchase and installation of energy

conservation ~~and facility and technology infrastructure upgrades and modernization~~ measures that cannot be totally funded by the energy and operational savings.

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

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

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

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

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

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

2. Annually compile a list of performance-based contracts entered into by local governments of which the Department ~~may become~~ [becomes](#) aware.

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

§~~11-34.4~~ [45.2-1704](#). Application of ~~chapter~~ [article](#).

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

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

254 ~~CHAPTER 1.~~

255 ~~ENERGY POLICY OF THE COMMONWEALTH.~~

256 Article 3.

257 Energy Policy of the Commonwealth.

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

260 § ~~67-100~~ 45.2-1705. Legislative findings.

261 The General Assembly hereby finds that:

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

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

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

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

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

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

§ ~~67-101~~ 45.2-1706. Energy objectives.

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

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

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

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

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

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

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

7. Facilitating conservation;

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

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

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

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

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

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

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

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

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

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

and forestland, and increase implementation of silvicultural and agricultural best management practices to protect water quality; and

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

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

Drafting note: The term "renewables" in subdivision A 16 is replaced with "renewable energy sources," the term used in subdivision A 1 of the following section. Technical changes are made, including the addition of subsection designations, and language is updated for modern usage.

~~§ 67-102~~ 45.2-1707. Commonwealth Energy Policy.

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

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

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

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

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

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

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

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

based fuels, and the infrastructure required for the widespread implementation of such technologies;

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

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

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

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

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

13. Support the distributed generation of renewable electricity by:

a. Encouraging private sector investments in distributed renewable energy;

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

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

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

C. All agencies and political subdivisions of the Commonwealth, in taking discretionary action with regard to energy issues, shall recognize the elements of the Commonwealth Energy Policy and where appropriate, shall act in a manner consistent therewith.

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

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

§ ~~67-103~~ 45.2-1708. Role of local governments in achieving objectives of the Commonwealth Energy Policy.

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

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

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

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

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

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

~~§ 67-104~~ 45.2-1709. Nuclear energy; considered a clean energy source.

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

Drafting note: Technical change.

~~CHAPTER 2.~~

~~VIRGINIA ENERGY PLAN.~~

Article 4.

Virginia Energy Plan.

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

~~§ 67-201~~ 45.2-1710. Development of the Virginia Energy Plan.

A. The Division, in consultation with the State Corporation Commission, the Department of Environmental Quality, the Clean Energy Advisory Board, the solar, wind, and energy efficiency sectors, and a stakeholder group that ~~shall include~~ includes representatives of consumer, environmental, manufacturing, forestry, and agricultural organizations and natural gas and electric utilities, shall prepare a comprehensive Virginia Energy Plan (the Plan) that identifies actions over a 10-year period consistent with the goal of the Commonwealth Energy Policy set forth in ~~§ 67-102~~ 45.2-xxx to achieve, no later than 2045, a net-zero carbon energy economy for all sectors, including the electricity, transportation, building, agricultural, and industrial sectors. The Plan shall propose actions, consistent with the objectives enumerated in ~~§ 67-101~~ 45.2-xxx, that will implement the Commonwealth Energy Policy set forth in ~~§ 67-102~~ 45.2-xxx.

B. In addition, the Plan shall include:

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

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

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

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

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

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

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

8. With regard to any regulations proposed or ~~promulgated~~ adopted by the U.S. Environmental Protection Agency to reduce carbon dioxide emissions from fossil fuel-fired electric generating units under § 111(d) of the federal Clean Air Act, 42 U.S.C. § ~~7411-(d)~~ 7411(d), an analysis of (i) the costs to and benefits for energy producers and electric utility customers; (ii) the effect on energy markets and reliability; and (iii) the commercial availability of technology required to comply with such regulations;

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

471 10. Recommendations, based on the analyses completed under subdivisions 1 through
472 9, for legislative, regulatory, and other public and private actions to implement the elements of
473 the Commonwealth Energy Policy.

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

480 D. In preparing the Plan, the Division and other agencies involved in the planning
481 process shall develop a system for ~~ascribing~~ assigning numerical scores to ~~parcels~~ any parcel
482 of real property based on the extent to which ~~the parcels are~~ such parcel is suitable for the siting
483 of a wind energy facility or solar energy facility. For a wind energy ~~facilities~~ facility, the scoring
484 system shall address the wind velocity, sustained velocity, and turbulence, ~~proximity to electric~~
485 ~~power transmission systems, potential impacts to natural and historic resources and to~~
486 ~~economically disadvantaged or minority communities, and compatibility with the local land use~~
487 ~~plan~~. For either a wind energy facility or a solar energy ~~facilities~~ facility, the scoring system
488 shall address the parcel's proximity to electric power transmission lines or systems, potential
489 impacts of such a facility to natural and historic resources and to economically disadvantaged
490 or minority communities, and compatibility with the local land use plan. The system developed
491 pursuant to this section shall allow the suitability of the parcel for the siting of a wind energy
492 ~~facility~~ or solar energy facility to be compared to the suitability of other parcels so scored, and
493 shall be based on a scale that allows the suitability of the parcel for the siting of ~~a such an energy~~
494 a facility to be measured against the hypothetical score of an ideal location for such a facility.

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

Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "regulations proposed or promulgated" is changed to "regulations proposed or adopted" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Duplicative language is removed from subsection D. An apparent error is corrected by removing the surplus "a" from the last sentence in subsection D. The obsolete 2007 date is stricken from subsection E and language is updated for modern usage.

~~§ 67-202~~ 45.2-1711. Schedule for the Plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. The expected remaining useful life of the unit;

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

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

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

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

577 the Code any word used in the singular includes the plural and vice versa. Language is
578 updated for clarity.

579 § ~~67-202.1~~ [45.2-1712](#). Annual reporting by investor-owned public utilities.

580 Each investor-owned public utility providing electric service in the Commonwealth
581 shall prepare an annual report disclosing its efforts to conserve energy, including ~~but not limited~~
582 ~~to~~ (i) its implementation of customer demand-side management programs and (ii) efforts by the
583 utility to improve efficiency and conserve energy in its internal operations pursuant to § 56-
584 235.1. The utility shall submit each annual report to the Division ~~of Energy of the Department~~
585 ~~of Mines, Minerals and Energy~~ by November 1 of each year, and the Division shall compile the
586 reports of the utilities and submit the compilation to the Governor and the General Assembly
587 as provided in the procedures of the Division of Legislative Automated Systems for the
588 processing of legislative documents.

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

593 § ~~67-203~~ [45.2-1713](#). Submission of [the](#) Plan.

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

599 **Drafting note: Technical change.**

600 ~~CHAPTER 6.~~

601 ~~VIRGINIA COASTAL ENERGY RESEARCH CONSORTIUM.~~

602 [Article 5.](#)

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

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

§ ~~67-600~~ 45.2-1714. Virginia Coastal Energy Research Consortium established; board of directors.

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

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

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

industry₂ and ~~(xvi)~~ the Director of the Department of Environmental Quality or his designee as the lead agency for the Virginia Coastal Zone Management Program.

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

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

~~§ 67-601~~ 45.2-1715. Functions, powers, and duties of the Consortium.

The Consortium shall serve as an interdisciplinary study, research, and information resource for the Commonwealth on coastal energy issues. As used in this ~~chapter~~ article, "coastal energy" includes wave or tidal action, currents, offshore winds, thermal differences, and methane hydrates. The Consortium shall (i) consult with the General Assembly, federal, state, and local agencies, nonprofit organizations, private industry₂ and other potential users of coastal energy research; (ii) establish and administer agreements with other baccalaureate institutions of higher education in the Commonwealth to carry out research projects relating to the feasibility of increasing the Commonwealth's reliance on all domestic forms of coastal energy; (iii) disseminate new information and research results; (iv) apply for grants made available pursuant to federal legislation, including ~~but not limited to~~ the federal Methane Hydrate Research and Development Act of 2000, P.L. 106-193₂ and from other sources; and (v) facilitate the application and transfer of new coastal energy technologies.

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

~~§ 67-603~~ 45.2-1716. Appointment of a director; powers and duties.

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

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

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

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

~~CHAPTER 16.~~

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

Article 6.

Southwest Virginia Energy Research and Development Authority.

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

~~§ 67-1600~~ 45.2-1717. (Expires July 1, 2029) Definitions.

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

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

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

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

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

Drafting note: Technical changes.

§ ~~67-1601~~ 45.2-1718. (Expires July 1, 2029) Southwest Virginia Energy Research and Development Authority ~~created~~ established; purpose.

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

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

§ ~~67-1602~~ 45.2-1719. (Expires July 1, 2029) Membership; terms; vacancies; expenses.

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

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

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

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

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

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

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

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

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

§~~67-1603~~ 45.2-1720. (Expires July 1, 2029) Powers and duties of the Authority.

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

1. Adopt, use, and alter at will an official seal;
2. Make bylaws for the management and regulation of its affairs;
3. Maintain an office at ~~such~~ any place ~~or places~~ within the Commonwealth ~~as it may designate~~ designates;
4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Authority, absolutely or in trust, from any source, public or private, for the purposes for which the Authority is ~~created~~ established;
5. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and ~~such~~ any other employees and agents ~~as may be~~ necessary and fix their compensation to be payable from funds made available to the Authority;
7. Invest its funds as permitted by applicable law;
8. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, or real or personal property for the benefit of the Authority, and receive and accept from the Commonwealth or any other state, ~~and~~ from any municipality, county, or other political subdivision thereof ~~and~~ or from any other source, aid or contributions of either money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made;
9. Enter into agreements with any department, agency, or instrumentality of the United States or of the Commonwealth and with lenders and enter into loans with contracting parties

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

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

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

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

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

14. Promote energy workforce development;

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

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

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

§ ~~67-1604~~ [45.2-1721](#). (Expires July 1, 2029) Annual report.

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

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

§ ~~67-1605~~ [45.2-1722](#). (Expires July 1, 2029) Confidentiality of information.

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

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

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

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

§ ~~67-1606~~ 45.2-1723. (Expires July 1, 2029) Declaration of public purpose; exemption from taxation.

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

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

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

§ ~~67-1607~~ 45.2-1724. (Expires July 1, 2029) Sunset.

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

Drafting note: Technical change.

824 WIND ENERGY.

825 **Drafting note: Existing Chapters 3 (§ 67-300) and 12 (§ 67.1200 et seq.) of Title 67,**
826 **relating to wind energy, are relocated and combined with a related section in Title 45.1 to**
827 **create proposed Chapter 18, Wind Energy. The proposed articles are as follows: Article**
828 **1 (General Provisions) and Article 2 (Virginia Offshore Wind Development Authority).**

829 Article 1.

830 General Provisions.

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

833 § 45.2-1800. Definitions.

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

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

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

839 "Hampton Roads region" means the same as that term is defined in § 22.1-356.

840 **Drafting note: This section is created to consolidate definitions for proposed**
841 **Chapter 18, Wind Energy. A cross-reference to the definition of the term "Hampton**
842 **Roads region" is added.**

843 ~~CHAPTER 3.~~

844 ~~OFFSHORE WIND ENERGY RESOURCES.~~

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

847 ~~§ 67-300~~ 45.2-1801. Offshore wind energy resources; policy.

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

850 **Drafting note: No change.**

851 ~~§ 67-301. Repealed.~~

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

853 § ~~45.1-161.5:1~~ 45.2-1802. Division of Offshore Wind; established.

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

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

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

861 2. Coordinating state agencies' activities related to offshore wind, including
862 development of programs that prepare ~~Virginia's~~ the Commonwealth's workforce to work in the
863 offshore wind industry, create employment opportunities for Virginians within such industry,
864 create opportunities for ~~Virginia-based~~ Commonwealth-based businesses to participate in the
865 offshore wind industry supply chain, and attract out-of-state offshore wind-related businesses
866 to locate within the Commonwealth;

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

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

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

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

may include its submission with the report of the ~~Virginia Offshore Wind Development~~
Authority required by § ~~67-1209~~ 45.2-xxx.

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

~~CHAPTER 12.~~

~~VIRGINIA OFFSHORE WIND DEVELOPMENT AUTHORITY.~~

Article 2.

Virginia Offshore Wind Development Authority.

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

§ ~~67-1200~~ 45.2-1803. Definitions.

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

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

"Developer" means any private developer of an offshore wind energy ~~projects~~ project.

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

"Transmission study" means a study to determine the potential interconnection options
to accommodate multiple offshore wind energy projects in the Hampton Roads region.

**Drafting note: The definition of the Virginia Offshore Wind Development
Authority is relocated to the chapter-wide definitions section. Technical changes are
made, including changes pursuant to § 1-227, which states that throughout the Code any
word used in the singular includes the plural and vice versa.**

§ ~~67-1201~~ 45.2-1804. Virginia Offshore Wind Development Authority ~~created~~
established; purpose.

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

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

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

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

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

§ ~~67-1202~~ 45.2-1805. Membership; terms; vacancies; expenses.

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

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

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

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

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

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

~~F.~~ E. Members of the Authority shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be

removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.

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

Drafting note: The corporate language for the Virginia Offshore Wind Development Authority is updated to reflect current language for political subdivisions in the Code. Language in existing subsection C related to the staggering of initial terms is stricken as obsolete and succeeding subsections are redesignated. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

~~§ 67-1206. Transmission of power from offshore wind energy projects.~~

~~A. The incumbent, investor-owned utility for the onshore service territory adjacent to any offshore wind generation project shall, at the request of the Department of Mines, Minerals and Energy, initiate a transmission study. Such utility shall initiate the transmission study no more than 30 days following the request of the Department of Mines, Minerals and Energy, and shall report to the Department of Mines, Minerals and Energy within 180 days of the request. The Department of Mines, Minerals and Energy shall report the results of the study to the Authority. The Department of Mines, Minerals and Energy shall request the study no later than July 31, 2010.~~

~~B. Upon receipt of the study, but no later than May 31, 2011, the Authority shall recommend such actions as it deems appropriate to facilitate transmission of power from offshore wind energy projects.~~

Drafting note: This section is recommended for repeal as obsolete.

~~§ 67-1207~~ 45.2-1806. Powers and duties of the Authority.

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

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

- 991 2. Make bylaws for the management and regulation of its affairs;
- 992 3. Maintain an office at ~~such~~ any place ~~or places~~ within the Commonwealth ~~as it may~~
- 993 ~~designate~~ designates;
- 994 4. Accept, hold, and administer moneys, grants, securities, or other property transferred,
- 995 given, or bequeathed to the Authority, absolutely or in trust, from any source, public or private,
- 996 for the purposes for which the Authority is ~~created~~ established;
- 997 5. Make and execute contracts and all other instruments and agreements necessary or
- 998 convenient for the exercise of its powers and functions;
- 999 6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants,
- 1000 financial experts, investment bankers, superintendents, managers, and ~~such~~ any other
- 1001 employees and agents ~~as may be~~ necessary, and fix their compensation to be payable from funds
- 1002 made available to the Authority;
- 1003 7. Invest its funds as permitted by applicable law;
- 1004 8. Receive and accept from any federal or private agency, foundation, corporation,
- 1005 association, or person grants, donations of money, or real or personal property for the benefit
- 1006 of the Authority, and receive and accept from the Commonwealth or any other state, ~~and~~ from
- 1007 any municipality, county, or other political subdivision thereof ~~and~~, or from any other source,
- 1008 aid or contributions of either money, property, or other things of value, to be held, used, and
- 1009 applied for the purposes for which such grants and contributions may be made;
- 1010 9. Enter into agreements with any department, agency, or instrumentality of the United
- 1011 States or of the Commonwealth and with lenders and enter into loans with contracting parties
- 1012 for the purpose of planning, regulating, and providing for the financing or assisting in the
- 1013 financing of any project;
- 1014 10. Do any lawful act necessary or appropriate to carry out the powers ~~herein~~ granted
- 1015 or reasonably implied in this article;
- 1016 11. Identify and take steps to mitigate existing state and regulatory or administrative
- 1017 barriers to the development of the offshore wind energy industry, including facilitating any
- 1018 permitting processes; and

12. Enter into interstate partnerships to develop the offshore wind energy industry and offshore wind energy projects.

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

§ ~~67-1208~~ [45.2-1807](#). Director; staff; counsel to the Authority.

A. The Director ~~of the Department of Mines, Minerals and Energy~~ shall serve as Director of the Authority and shall administer the affairs and business of the Authority in accordance with the provisions of this ~~chapter~~ [article](#) and subject to the policies, control, and direction of the Authority. The Director shall maintain, and ~~be~~ [is](#) custodian of, all books, documents, and papers of or filed with the Authority. The Director may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that such copies are true copies, and all persons dealing with the Authority may rely on such certificates. The Director also shall perform such other duties as prescribed by the Authority in carrying out the purposes of this ~~chapter~~ [article](#).

B. The Division ~~of Offshore Wind within the Department of Mines, Minerals and Energy~~ shall serve as staff to the Authority.

C. The Office of the Attorney General shall provide counsel to the Authority.

Drafting note: Technical changes are made. A reference to the Division of Offshore Wind is shortened pursuant to the chapter-wide definitions in proposed § 45.2-xxx [first section in proposed Chapter 18] and two unnecessary uses of the full name of the Department of Mines, Minerals and Energy are removed pursuant to the title-wide definitions in proposed § 45.2-xxx [first section in proposed Chapter 1].

§ ~~67-1209~~ [45.2-1808](#). Annual report.

On or before October 15 of each year, the Authority shall submit an annual summary of its activities and recommendations to the Governor and the ~~Chairs~~ [Chairmen](#) of the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, the House Committee on Labor and Commerce, and the Senate Committee on Commerce and

Labor. Such report may include the submission of the Division ~~of Offshore Wind within the Department of Mines, Minerals and Energy~~ required by § ~~45.1-161.5:1~~ 45.2-xxx.

Drafting note: A reference to the Division of Offshore Wind is shortened pursuant to the chapter-wide definitions in § 45.2-xxx [first section in proposed Chapter 18] and an unnecessary use of the full name of the Department of Mines, Minerals and Energy is removed pursuant to the chapter-wide definitions in § 45.2-xxx.

§ ~~67-1210~~ 45.2-1809. Confidentiality of information.

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

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

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

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

§ ~~67-1211~~ 45.2-1810. Declaration of public purpose; exemption from taxation.

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

B. The Authority shall be deemed to be performing an essential governmental function in the exercise of the powers conferred upon it by this ~~chapter~~ article, and the property of the

Authority and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Authority under the provisions of this ~~chapter~~ [article](#).

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

~~§ 67-1203 45.2-1811. Data collection~~ [Operation](#).

~~A.~~ The Authority shall, through moneys derived from sources other than state funds, to the extent such moneys are available, operate in cooperation with the National Oceanic and Atmospheric Administration to upgrade wind resource and other metocean assessment equipment at Chesapeake Light Tower and other structures.

[§ 45.2-1812. Public-private partnerships.](#)

~~B. A.~~ The Authority may establish public-private partnerships with ~~a developer~~ [developers](#) pursuant to the Public-Private ~~Educational~~ [Education](#) Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) for [purposes set forth in this section](#).

[B. The Authority may establish a public-private partnership for](#) the installation and operation of wind resource and other metocean equipment, including light detection and ranging equipment, meteorological measurement towers, and data collection platforms. Any partnership established pursuant to this subsection shall stipulate that:

1. The Authority and the ~~developers~~ [developer](#) shall share the costs of the upgrade;
2. The developer, in coordination with the Authority and relevant state and federal agencies, shall operate any meteorological measurement towers and data collection platforms;
- and
3. The developer shall make all collected data available to the Authority.

C. The Authority may establish ~~public-private partnerships with a developer pursuant to the Public-Private Educational Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.)~~ [a public-private partnership](#) for the collection of avian and marine environmental data. Any partnership established pursuant to this subsection shall stipulate that:

1. The Authority and the developer shall share the costs of data collection;

2. The developer, in coordination with the Authority and relevant state and federal agencies, shall manage the environmental data collection process; and

3. The developer shall make all collected data available to the Authority.

D. The Authority may make any data collected pursuant to ~~this section~~ [subsection B or C](#) available to the public.

~~§ 67-1204. Port facilities upgrades.~~

[E.](#) The Authority may establish ~~public-private partnerships with entities pursuant to the Public-Private Educational Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.)~~ [a public-private partnership](#) for the upgrade of port facilities and other logistical equipment and sites to accommodate the manufacturing and assembly of offshore wind energy project components and vessels that will support the construction and operations of offshore wind energy projects. Any partnership established pursuant to this subsection shall stipulate that the Authority and the entities shall share the costs of the upgrade.

Drafting note: Existing § 67-1203 is divided into two sections, the first of which is composed only of existing subsection A, relating to operation, and the section catchline is changed accordingly. The final three subsections of existing § 67-1203 are combined with the succeeding section, § 67-1204, and the subsections are redesignated. Redundant Code references are removed.

~~§ 67-1205~~ [45.2-1813](#). Federal loan guarantees.

A. The Authority, on behalf of the Commonwealth, may apply to the U.S. Department of Energy for federal loan guarantees authorized or made available pursuant to Title XVII of the [federal](#) Energy Policy Act of 2005, ~~42 U.S.C. § 16511 et seq.~~, [P.L. 109-58](#); the [federal](#) American Recovery and Reinvestment Act of 2009, P.L. 111-5; or other similar federal legislation, to facilitate the development of offshore wind energy projects.

B. Upon obtaining [a](#) federal loan ~~guarantees~~ [guarantee](#) for [an](#) offshore wind energy ~~projects~~ [project](#) pursuant to subsection A, the Authority, subject to any restrictions imposed by federal law, may allocate or assign all or ~~portions~~ [any portion](#) thereof to [a](#) qualified third ~~parties,~~ [party](#) on ~~such~~ terms and conditions ~~as~~ the Authority finds ~~are~~ appropriate. ~~Actions~~ [Any action](#)

of the Authority relating to the allocation and assignment of such loan~~-guarantees~~ guarantee shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002. ~~Decisions~~ Any decision of the Authority pursuant to this section shall be final and not subject to review or appeal.

Drafting note: The section, which deals with a specific power of the Authority, is moved to the end of the chapter so that it follows the sections addressing basic corporate powers. An erroneous citation for the federal Energy Policy Act of 2005 is replaced and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.

CHAPTER 19.

SOLAR ENERGY.

Drafting note: Proposed Chapter 19 is composed of general provisions as Article 1, existing § 45.1-391 as Article 2, existing Chapter 15 (§ 67-1500 et seq.) of Title 67 as Article 3, and existing Chapter 27 (§ 45.1-395) of Title 45.1 as Article 4. The proposed articles are as follows: Article 1 (Virginia Solar Energy Center), Article 2 (Virginia Solar Energy Development and Energy Storage Authority), and Article 3 (Clean Energy Advisory Board).

Article 1.

Virginia Solar Energy Center.

Drafting note: Proposed Article 1 is created to logically organize existing § 45.1-391, relating to the Virginia Solar Energy Center.

§ ~~45.1-391~~ 45.2-1900. Virginia Solar Energy Center; purposes.

A. The Virginia Solar Energy Center (the Center) is ~~continued~~ established as ~~a~~ part of the Department. The purposes of the Center are to (i) ~~to~~ serve the people of the Commonwealth as a clearinghouse to gather, maintain, and disseminate general and technical information on solar energy and its utilization; (ii) ~~to~~ coordinate programs for solar energy data-gathering in ~~Virginia~~ the Commonwealth; (iii) ~~to~~ coordinate efforts and programs on solar energy with other

state agencies and institutions, other states, and federal agencies; (iv) ~~to~~ promote cooperation among and between Virginia business, industry, and agriculture and the public related to the use of solar energy; (v) ~~to~~ develop public education programs on solar energy for use in schools and by the public; and (vi) ~~to~~ provide assistance in formulating policies on the utilization of solar energy that would be in the best interest of the Commonwealth.

B. The ~~intent of the General Assembly is to provide an organization for the purposes set out in this section to~~ Center may receive nonstate funds for ~~such~~ the purposes provided in this section.

Drafting note: Technical changes are made, including the addition of subsection designations, and language is updated for modern usage. The beginning of proposed subsection B is stricken in accordance with the Code Commission's policy that intent statements do not have general and permanent application and thus are not to be included in the Code.

~~CHAPTER 15.~~

~~VIRGINIA SOLAR ENERGY DEVELOPMENT AND ENERGY STORAGE~~

~~AUTHORITY.~~

Article 2.

Virginia Solar Energy Development and Energy Storage Authority.

Drafting note: Existing Chapter 15 of Title 67, relating to the Virginia Solar Energy Development and Energy Storage Authority, is relocated as proposed Article 2 of Chapter 19.

§ ~~67-1500~~ 45.2-1901. (Expires July 1, 2025) Definitions.

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

"Authority" means the Virginia Solar Energy Development and Energy Storage Authority ~~created~~ established pursuant to this ~~chapter~~ article.

"Developer" means any private developer of a solar energy project or an energy storage project.

"Energy storage project" means an energy storage facility located within the Commonwealth and includes interests in land, improvements, and ancillary facilities.

"Solar energy project" means an electric generation facility located within the Commonwealth and includes interests in land, improvements, and ancillary facilities.

Drafting note: Technical changes.

§ ~~67-1501~~ 45.2-1902. (Expires July 1, 2025) Virginia Solar Energy Development and Energy Storage Authority ~~created~~ established; purpose.

The Virginia Solar Energy Development Authority is continued as the Virginia Solar Energy Development and Energy Storage Authority. The Authority constitutes a ~~body corporate and a~~ political subdivision of the Commonwealth ~~and as such shall have, and is vested with, all of the politic and corporate powers as are set forth in this chapter~~. The Authority is established for the purposes of (i) facilitating, coordinating, and supporting the development, either by the Authority or by other qualified entities, of the solar energy and energy storage industries and solar energy and energy storage projects by developing programs that increase the availability of financing for solar energy projects and energy storage projects; (ii) facilitating the increase of solar energy generation systems and energy storage projects on public and private sector facilities in the Commonwealth; (iii) promoting the growth of the ~~Virginia Commonwealth's~~ solar and energy storage industries; (iv) providing a hub for collaboration between entities, both public and private, to partner on solar energy projects and energy storage projects; and (v) positioning the Commonwealth as a leader in research, development, commercialization, manufacturing, and deployment of energy storage technology. The Authority may also consult with research institutions, businesses, nonprofit organizations, and stakeholders as the Authority deems appropriate. The Authority ~~shall have~~ has only those powers enumerated in this ~~chapter~~ article.

Drafting note: The corporate language for the Virginia Solar Energy Development and Energy Storage Authority is updated to reflect current language for political subdivisions in the Code. A redundant reference to the powers of the Authority in the first sentence is removed. Technical changes are made.

1212 § ~~67-1502~~ 45.2-1903. (Expires July 1, 2025) Membership; terms; vacancies; expenses.

1213 A. The Authority shall ~~be composed~~ have a total membership of 15 nonlegislative
1214 citizen members appointed as follows: ~~Eight~~ eight members ~~shall to~~ be appointed by the
1215 Governor; four members ~~shall to~~ be appointed by the Speaker of the House of Delegates; and
1216 three members ~~shall to~~ be appointed by the Senate Committee on Rules. All members of the
1217 Authority shall ~~reside in~~ be citizens of the Commonwealth. Members may include
1218 representatives of solar businesses, solar customers, renewable energy financiers, state and local
1219 government solar customers, institutions of higher education who have expertise in energy
1220 technology, and solar research academics.

1221 B. Except as otherwise provided ~~herein~~ in this article, all appointments shall be for terms
1222 of four years each. No member shall be eligible to serve more than two successive four-year
1223 terms. After expiration of an initial term of three years or less, two additional four-year terms
1224 may be served by such member if appointed thereto. Appointments to fill vacancies, other than
1225 by expiration of a term, shall be made for the unexpired terms. Any appointment to fill a
1226 vacancy shall be made in the same manner as the original appointment. The remainder of any
1227 term to which a member is appointed to fill a vacancy shall not constitute a term in determining
1228 the member's eligibility for reappointment.

1229 ~~C. The initial appointments of members by the Governor made pursuant to Chapters 90~~
1230 ~~and 398 of the Acts of Assembly of 2015 shall be as follows: two members shall be appointed~~
1231 ~~for terms of four years, two members shall be appointed for terms of three years, and two~~
1232 ~~members shall be appointed for terms of two years. The initial appointments of members by the~~
1233 ~~Speaker of the House of Delegates made pursuant to Chapters 90 and 398 of the Acts of~~
1234 ~~Assembly of 2015 shall be as follows: one member shall be appointed for a term of four years,~~
1235 ~~one member shall be appointed for a term of three years, and one member shall be appointed~~
1236 ~~for a term of two years. The initial appointments of members by the Senate Committee on Rules~~
1237 ~~made pursuant to Chapters 90 and 398 of the Acts of Assembly of 2015 shall be as follows: one~~
1238 ~~member shall be appointed for a term of four years, and one member shall be appointed for a~~
1239 ~~term of three years. Thereafter all appointments shall be for terms of four years.~~

1240 ~~D.~~ The Authority shall appoint from its membership a chairman and a vice-chairman,
1241 ~~both~~ each of whom shall serve in such ~~capacities~~ capacity at the pleasure of the Authority. The
1242 chairman, or in his absence the vice-chairman, shall preside at ~~all meetings~~ each meeting of the
1243 Authority. The meetings of the Authority shall be held on the call of the chairman or whenever
1244 a majority of the members so request. A majority of members of the Authority serving at any
1245 one time shall constitute a quorum for the transaction of business.

1246 ~~E.~~ D. Members shall serve without compensation. However, all members may be
1247 reimbursed for all reasonable and necessary expenses incurred in the performance of their duties
1248 as provided in §§ 2.2-2813 and 2.2-2825. Such expenses shall be paid from ~~such~~ funds ~~as may~~
1249 ~~be~~ appropriated to the Authority by the General Assembly.

1250 ~~F.~~ E. Members of the Authority shall be subject to the standards of conduct set forth in
1251 the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be
1252 removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct
1253 in the manner set forth therein.

1254 ~~G.~~ F. Except as otherwise provided in this ~~chapter~~ article, members of the Authority
1255 shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et
1256 seq.).

1257 **Drafting note: The corporate language for the Virginia Solar Energy Development**
1258 **and Energy Storage Authority is updated to reflect current language for political**
1259 **subdivisions in the Code. Language in existing subsection C related to the staggering of**
1260 **initial terms of members is stricken as obsolete and succeeding subsections are**
1261 **redesignated. Technical changes are made, including changes pursuant to § 1-227, which**
1262 **states that throughout the Code any word used in the singular includes the plural and vice**
1263 **versa.**

1264 § ~~67-1503~~ 45.2-1904. (Expires July 1, 2025) Partnerships.

1265 A. The Authority may establish public-private partnerships with entities pursuant to the
1266 Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) to
1267 increase the number of solar energy generation systems on or located adjacent to public and

private facilities in the Commonwealth. Any partnership established pursuant to this section shall stipulate that the Authority and the developers shall share the costs of the installation and operation of solar energy facilities and equipment.

B. The Authority may provide a central hub for appropriate entities, both public and private, to enter into partnerships that result in solar energy generation projects being developed in the Commonwealth. The Authority may act as a good faith broker in ~~these~~ such matters to facilitate appropriate partnerships, including public-private partnerships.

Drafting note: Technical change.

~~§ 67-1504~~ 45.2-1905. (Expires July 1, 2025) Federal loan guarantees.

A. The Authority, on behalf of the Commonwealth, may apply to the U.S. Department of Energy for federal loan guarantees authorized or made available pursuant to Title XVII of the federal Energy Policy Act of 2005, ~~42 U.S.C. § 16511 et seq., P.L. 109-58;~~ the federal American Recovery and Reinvestment Act of 2009, P.L. 111-5~~;~~ or other similar federal legislation~~;~~ to facilitate the development of solar energy projects.

B. Upon obtaining a federal loan ~~guarantees~~ guarantee for a solar energy ~~projects~~ project pursuant to subsection A, the Authority, subject to any restrictions imposed by federal law, may allocate or assign all or ~~portions~~ any portion thereof to a qualified third ~~parties,~~ party on ~~such~~ terms and conditions ~~as~~ the Authority finds ~~are~~ appropriate. ~~Actions~~ Any action of the Authority relating to the allocation and assignment of such loan ~~guarantees~~ guarantee shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002. ~~Decisions~~ Any decision of the Authority pursuant to this section shall be final and not subject to review or appeal.

Drafting note: An erroneous citation for the federal Energy Policy Act of 2005 is replaced and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.

~~§ 67-1505~~ 45.2-1906. (Expires July 1, 2025) Powers and duties of the Authority.

1295 In addition to ~~such~~ other powers and duties established under this ~~chapter~~ [article](#), the
1296 Authority ~~shall have~~ [has](#) the power and duty to:

1297 1. Adopt, use, and alter at will an official seal;

1298 2. Make bylaws for the management and regulation of its affairs;

1299 3. Maintain an office at ~~such~~ [any](#) place ~~or places~~ within the Commonwealth ~~as it may~~
1300 ~~designate~~ [designates](#);

1301 4. Accept, hold, and administer moneys, grants, securities, or other property transferred,
1302 given, or bequeathed to the Authority, absolutely or in trust, from any source, public or private,
1303 for the purposes for which the Authority is ~~created~~ [established](#);

1304 5. Make and execute contracts and all other instruments and agreements necessary or
1305 convenient for the exercise of its powers and functions;

1306 6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants,
1307 financial experts, investment bankers, superintendents, managers, and ~~such~~ [any](#) other
1308 employees and agents ~~as may be~~ necessary and fix their compensation to be payable from funds
1309 made available to the Authority;

1310 7. Invest its funds as permitted by applicable law;

1311 8. Receive and accept from any federal or private agency, foundation, corporation,
1312 association, or person grants, donations of money, or real or personal property for the benefit
1313 of the Authority, and receive and accept from the Commonwealth or any [other](#) state, ~~and~~ from
1314 any municipality, county, or other political subdivision thereof ~~and~~, [or from](#) any other source,
1315 aid or contributions of either money, property, or other things of value, to be held, used, and
1316 applied for the purposes for which such grants and contributions may be made;

1317 9. Enter into agreements with any department, agency, or instrumentality of the United
1318 States or of the Commonwealth and with lenders and enter into loans with contracting parties
1319 for the purpose of planning, regulating, and providing for the financing or assisting in the
1320 financing of any project;

1321 10. Do any lawful act necessary or appropriate to carry out the powers ~~herein~~ granted
1322 or reasonably implied [in this article](#);

11. Identify and take steps to mitigate existing state and regulatory or administrative barriers to the development of the solar energy and energy storage industries, including facilitating any permitting processes;

12. Enter into interstate partnerships to develop the solar energy industry, solar energy projects, and energy storage projects;

13. Collaborate with entities, including institutions of higher education, to increase the training and development of the workforce needed by the solar and energy storage industries in the Commonwealth, including industry-recognized credentials and certifications;

14. Conduct any other activities as may seem appropriate to increase solar energy generation in the Commonwealth and the associated jobs and economic development and competitiveness benefits, including assisting investor-owned utilities in the planned deployment of at least 400 megawatts of solar energy projects in the Commonwealth by 2020 through entering into agreements in its discretion in any manner provided by law for the purpose of planning and providing for the financing or assisting in the financing of the construction or purchase of such solar energy projects authorized pursuant to § 56-585.1;

15. Promote collaborative efforts among ~~Virginia's~~ the Commonwealth's public and private institutions of higher education in research, development, and commercialization efforts related to energy storage;

16. Monitor relevant developments in energy storage technology and deployment nationally and globally and disseminate relevant information and research results; and

17. Identify and work with the Commonwealth's industries and nonprofit partners in advancing efforts related to the development and commercialization of energy storage.

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

§ ~~67-1506~~ 45.2-1907. (Expires July 1, 2025) Director; staff; counsel to the Authority.

A. The Director ~~of the Department of Mines, Minerals and Energy~~ shall serve as Director of the Authority and shall administer the affairs and business of the Authority in

accordance with the provisions of this ~~chapter~~ article and subject to the policies, control, and direction of the Authority. The Director may obtain non-state-funded support to carry out any duties assigned to the Director. Funding for ~~this~~ such support may be provided by any source, public or private, for the purposes for which the Authority is ~~created~~ established. The Director shall maintain, and ~~be~~ is custodian of, all books, documents, and papers of or filed with the Authority. The Director may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that such copies are true copies, and ~~all persons~~ any person dealing with the Authority may rely on such certificates. The Director also shall perform ~~such~~ other duties ~~as~~ prescribed by the Authority in carrying out the purposes of this ~~chapter~~ article.

B. The Department ~~of Mines, Minerals and Energy~~ shall serve as staff to the Authority.

C. The Office of the Attorney General shall provide counsel to the Authority.

Drafting note: Technical changes are made. Unnecessary uses of the full name of the Department of Mines, Minerals and Energy are removed pursuant to the title-wide definitions in proposed § 45.2-xxx [first section in proposed Chapter 1].

§ ~~67-1507~~ 45.2-1908. (Expires July 1, 2025) Annual report.

On or before October 15 of each year, ~~beginning in 2016~~, the Authority shall submit an annual summary of its activities and recommendations to the Governor and the Chairmen of the House Committee on Appropriations ~~Committee~~, the Senate Committee on Finance ~~Committee~~, and Appropriations, the House Committee on Labor and Commerce, and the Senate Committee on Commerce and Labor ~~Committees~~.

Drafting note: The obsolete 2016 date is stricken and language is updated for modern usage, including updating House and Senate committee names changed in the 2020 Session.

§ ~~67-1508~~ 45.2-1909. (Expires July 1, 2025) Confidentiality of information.

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

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

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

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

§ ~~67-1509~~ 45.2-1910. (Expires July 1, 2025) Declaration of public purpose; exemption from taxation.

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

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

Drafting note: Language is updated for modern usage.

§ 45.2-1911. Sunset.

The provisions of this article shall expire on July 1, 2025.

Drafting note: The second enactment of Acts 2015, cc. 90 and 398, which provides a sunset date for proposed Article 3, is proposed for codification.

~~CHAPTER 27.~~

~~CLEAN ENERGY ADVISORY BOARD.~~

Article 3.

1407 [Clean Energy Advisory Board.](#)

1408 **Drafting note: Existing Chapter 27, concerning the Clean Energy Advisory Board,**
1409 **is relocated to proposed Article 3.**

1410 [§ 45.2-1912. Definitions.](#)

1411 [As used in this article, unless the context requires a different meaning:](#)

1412 ["Board" means the Clean Energy Advisory Board created pursuant to § 45.2-xxx \[45.1-](#)
1413 [395\].](#)

1414 ["Fund" means the Low-to-Moderate Income Solar Loan and Rebate Fund created](#)
1415 [pursuant to § 45.2-xxx \[45.1-398\].](#)

1416 ["Program" means the Low-to-Moderate Income Solar Loan and Rebate Pilot Program](#)
1417 [created pursuant to § 45.2-xxx \[45.1-399\].](#)

1418 **Drafting note: Article-wide definitions section added.**

1419 ~~§ 45.1-395~~ [45.2-1913](#). Clean Energy Advisory Board; purpose.

1420 The Clean Energy Advisory Board ~~(the Board)~~ is established as an advisory board in
1421 the executive branch of state government. The purpose of the Board is to establish a pilot
1422 program for disbursing loans or rebates for the installation of solar energy infrastructure in low-
1423 income and moderate-income households.

1424 **Drafting note: Technical change.**

1425 ~~§ 45.1-396~~ [45.2-1914](#). Membership; terms; quorum; meetings.

1426 [A.](#) The Board shall have a total membership of 17 members that shall consist of 16
1427 nonlegislative citizen members and one ex officio member. Members may reside within or
1428 without the Commonwealth. Nonlegislative citizen members shall be appointed as follows:

1429 1. Six nonlegislative citizen members to be appointed by the Speaker of the House of
1430 Delegates upon consideration of the recommendations of the Board of Directors of the
1431 Maryland-DC-Delaware-Virginia Solar Energy Industries Association (the MDV-SEIA Board)
1432 and the Governor's Advisory Council on Environmental Justice (the Council), one of whom
1433 shall be a designee of the Virginia Housing Development Authority, created pursuant to the
1434 provisions of Chapter 1.2 (§ 36-55.24 et seq.) of Title 36; one of whom shall be a rooftop solar

energy professional or employer or representative of rooftop solar energy professionals; one of whom shall be a current or former member of the Council; one of whom shall be a member or representative of the Virginia, Maryland and Delaware Association of Electric Cooperatives (VMDAEC); one of whom shall be an expert with experience developing low-income or moderate-income incentive and loan programs for distributed renewable energy resources; and one of whom shall be an attorney who is licensed to practice in the Commonwealth and maintains a legal practice dedicated to rural development, rural electrification, and energy policy;

2. Three nonlegislative citizen members to be appointed by the Senate Committee on Rules upon consideration of the recommendations of the MDV-SEIA Board, one of whom shall be a solar energy professional or employer or representative of solar energy professionals, one of whom shall work for or with ~~a Virginia-based~~ an investor-owned electric utility company based in the Commonwealth, and one of whom shall be a member or representative of VMDAEC; and

3. Seven nonlegislative citizen members to be appointed by the Governor upon consideration of the recommendations of the MDV-SEIA Board and the Council and subject to confirmation by the General Assembly, one of whom shall be an attorney who is licensed to practice in the Commonwealth and maintains a legal practice in renewable energy law and transactions, one of whom shall be an attorney who is licensed to practice in the Commonwealth and specializes in tax law and energy transactions, one of whom shall be an attorney with the Division of Consumer Counsel created pursuant to the provisions of § 2.2-517, one of whom shall be an employee of a community development financial institution who specializes in impact investing, one of whom shall be a member of a Virginia environmental organization, and two of whom shall be designees of the Department of Housing and Community Development, created pursuant to the provisions of Chapter 8 (§ 36-131 et seq.) of Title 36.

B. The Director or his designee shall serve ex officio with voting privileges and shall assist in convening the meetings of the Board.

1462 C. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth.
1463 The ex officio member of the Board shall serve a term coincident with his term of office.
1464 Nonlegislative citizen members shall be appointed for a term of three years. Appointments to
1465 fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies
1466 shall be filled in the same manner as the original appointments. All members may be
1467 reappointed.

1468 D. The Board shall elect a chairman and vice-chairman from among its membership. A
1469 majority of the members shall constitute a quorum. The meetings of the Board shall be held at
1470 the call of the chairman or whenever the majority of the members so request.

1471 **Drafting note: Technical changes.**

1472 § ~~45.1-397~~ 45.2-1915. Powers and duties of the Board; report.

1473 The Board ~~shall have~~ has the ~~following~~ powers and duties to:

1474 1. ~~To advise~~ Advise the Director on the management of the ~~Low to Moderate Income~~
1475 ~~Solar Loan and Rebate Fund (the Fund)~~ pursuant to the provisions of § ~~45.1-398~~ 45.2-xxx;

1476 2. ~~To develop~~ Develop, establish, and operate, with the approval of the Director, ~~a Low~~
1477 ~~to Moderate Income Solar Loan and Rebate Pilot~~ the Program ~~(the Program)~~ pursuant to the
1478 provisions of § ~~45.1-399~~ 45.2-xxx;

1479 3. ~~To advise~~ Advise the Director on the possibility of working with a community
1480 development financial institution or other financial institutions to further the purposes of the
1481 Program;

1482 4. ~~To advise~~ Advise the Director on the distribution of moneys in the Fund in the form
1483 of loans or rebates pursuant to the provisions of § ~~45.1-399~~ 45.2-xxx; and

1484 5. ~~To submit~~ Submit to the Governor and the General Assembly an annual report for
1485 publication as a report document as provided in the procedures of the Division of Legislative
1486 Automated Systems for the processing of legislative documents and reports. The chairman shall
1487 submit to the Governor and the General Assembly an annual executive summary of the interim
1488 activity and work of the Board no later than the first day of each regular session of the General
1489 Assembly. The executive summary shall be submitted for publication as a report document as

provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

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

§ ~~45.1-398~~ 45.2-1916. Low-to-Moderate Income Solar Loan and Rebate Fund.

There is hereby ~~created~~ established in the state treasury a special nonreverting fund to be known as the Low-to-Moderate Income Solar Loan and Rebate Fund ~~(the Fund)~~. The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of extending loans or paying rebates to electric customers who complete solar installations or energy efficiency improvements pursuant to the provisions of § ~~45.1-399~~ 45.2-xxx. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

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

§ ~~45.1-399~~ 45.2-1917. Low-to-Moderate Income Solar Loan and Rebate Pilot Program.

A. The Board, with the approval of the Director, shall develop and establish a Low-to-Moderate Income Solar Loan and Rebate Pilot Program ~~(the Program)~~ and rules for the loan or rebate application process. The Program shall be open to any Virginia resident whose household income is at or below 80 percent of the state median income or regional median income, whichever is greater. The Program shall allow only one loan per residence, irrespective of the ownership of the solar energy system that is installed. Such loan shall be available only for a solar installation or energy efficiency improvements pursuant to the provisions of Chapter 1.2 (§ 36-55.24 et seq.) of Title 36.

1518 B. The Board shall accept an application only from the installer of the solar installation
1519 or the agent of the customer.

1520 Each application shall include (i) 12 months of the customer's utility bills prior to
1521 installation of the solar energy system and an agreement to provide 12 months of utility bills to
1522 the Board following the installation; (ii) the customer's permission for the Director to (a) create
1523 a customer profile for the customer if he becomes an eligible loan or rebate customer, (b)
1524 aggregate the data provided by such eligible loan or rebate customers, and (c) use such
1525 aggregate data for the purpose of lowering energy costs and implementing effective programs;
1526 (iii) evidence of the completion of a home performance audit, conducted by a qualified local
1527 weatherization service provider, before and after installation of energy efficiency services such
1528 as lighting or insulation improvements, attic tents, weatherization, air sealing of openings in the
1529 building envelope, sealing of ducts, or thermostat upgrades, to demonstrate that such energy
1530 efficiency services were completed and resulted in a reduction in consumption of at least 12
1531 percent; and (iv) an affidavit attesting to the receipt of a public benefit at the time the solar
1532 energy system is to be installed.

1533 C. The Board shall review each application submitted to it on a first-come, first-served
1534 basis and shall recommend to the Director the approval or denial of each such application within
1535 30 days of receipt. If the Director approves an application, he shall hold a reservation of funds
1536 for as long as 180 days for final loan or rebate claim and disbursement.

1537 D. A customer whose application is approved may install an energy system that is
1538 interconnected pursuant to the provisions of § 56-594 or any section in Title 56 that addresses
1539 net energy metering provisions for electric cooperative service territories.

1540 E. All of the work of installing the energy system shall be completed by a licensed
1541 contractor that (i) possesses an Alternative Energy System (AES) Contracting specialty as
1542 defined by the Board for Contractors pursuant to the provisions of Chapter 11 (§ 54.1-1100 et
1543 seq.) of Title 54.1; (ii) possesses certification for solar installation from the North American
1544 Board of Certified Energy Practitioners, Solar Energy International, Roof Integrated Solar
1545 Energy, or a similar installer certification program; (iii) possesses a rating of "A" or higher from

the local Better Business Bureau; and (iv) has installed a minimum of 150 net-metered residential solar systems in ~~Virginia~~ the Commonwealth. If the work of installing the solar energy system requires electrical work, ~~it~~ such work shall be completed by an electrical contractor licensed by the ~~Virginia~~ Department of Professional and Occupational Regulation. All photovoltaic panels, inverters, and other electrical apparatus used in the solar energy system shall be tested and certified by a federal Occupational Safety and Health Administration Nationally Recognized Testing Laboratory such as UL LLC and installed in compliance with manufacturer specifications and all applicable building and electrical codes.

F. The customer or the installer, acting on behalf of the customer, shall submit any loan or rebate claim within 90 days of completion of the installation of the solar energy system, with completion deemed to have occurred once the solar energy system's bi-directional meter or net meter, or the respective utility's revenue grade meter, has been installed and the system has been electrified. Each rebate claim shall include, at a minimum, a date of system electrification and a time-stamped and date-stamped verification of (i) bi-directional net meter delivery or (ii) the operation of a compatible programmed smart meter capable of tracking net metering activity.

G. The Director shall review and approve or deny a loan or rebate claim within 60 days of receipt and shall provide a written explanation of each denial to the respective claimant. The Director shall disburse from the ~~Low to Moderate Income Solar Loan and Rebate~~ Fund created pursuant to § ~~45.1-398~~ 45.2-xxx the loan or rebate for each approved claim within 60 days of its receipt of the claim and according to the order in which its respective application was approved. Any rebate or grant shall be in the amount of no more than \$2 per DC watt for up to six kilowatts of solar capacity installed. The customer may use a rebate in addition to any federal tax credits or state incentives or enhancements earned for the same solar installation.

Drafting note: Technical changes.

~~§ 45.1-400. Repealed.~~

Drafting note: Repealed by Acts 2020, c. 803, cl. 2.

CHAPTER ~~45.1~~ 20.

GEOHERMAL ENERGY.

Drafting note: Existing Chapter 15.1, concerning geothermal energy, is retained as proposed Chapter 20.

Article 1.

General Provisions.

Drafting note: Existing Article 1, concerning general provisions, is retained as proposed Article 1.

~~§ 45.1-179.1. Short title; purpose.~~

~~This chapter may be cited as the Virginia Geothermal Resource Conservation Act. It is the policy of the Commonwealth of Virginia and the purpose of this law to: (i) foster the development, production, and utilization of geothermal resources, (ii) prevent waste of geothermal resources, (iii) protect correlative rights to the resource, (iv) protect existing high-quality state waters, and safeguard potable waters from pollution, (v) safeguard the natural environment, (vi) promote geothermal and water resource conservation and management, and (vii) safeguard the health, safety, and welfare of the citizens of the Commonwealth.~~

Drafting note: The first sentence of this section is deleted as unnecessary pursuant to § 1-244, which states that throughout the Code the caption of a subtitle, chapter, or article serves as a short title citation. The remainder of this section containing a declaration of policy is stricken in accordance with the Code Commission's policy that policy statements do not have general and permanent application and thus are not to be included in the Code.

~~§ 45.1-179.2~~ 45.2-2000. Definitions.

~~The following terms—As~~ used in this chapter ~~have the meanings respectively ascribed thereto,~~ unless the context ~~clearly~~ requires ~~otherwise~~ a different meaning:

"Board" means the State Water Control Board.

"Correlative-~~rights~~" right" means the right of each geothermal owner in a geothermal system to produce without waste his just and equitable share of the geothermal resources in the geothermal system~~;~~.

1600 "Geothermal energy" means the usable energy that is produced or ~~which that~~ can be
1601 produced from a geothermal ~~resources;~~ resource.

1602 "Geothermal resource" means the natural heat of the earth and the energy, in whatever
1603 form, that is present in, associated with, or created by, or ~~which that~~ may be extracted from, ~~that~~
1604 such natural heat, as determined by the ~~rules and~~ regulations of the Department;

1605 "Geothermal system" means any aquifer, pool, reservoir, or other geologic formation
1606 containing geothermal resources; ~~and~~.

1607 **Drafting note: The term "Board" is moved into alphabetical order and technical**
1608 **changes are made, including changes pursuant to § 1-227, which states that throughout the**
1609 **Code any word used in the singular includes the plural and vice versa. Language is updated**
1610 **for modern usage.**

1611 § ~~45.1-179.3~~ 45.2-2001. Application.

1612 The provisions of this chapter regarding (i) permitting, well regulations, reservoir
1613 management, and allocation apply to geothermal resources at temperatures above the minimum
1614 temperature set forth by the Department pursuant to § ~~45.1-179.7,~~ 45.2-xxx and (ii) leasing
1615 requirements, royalties, or severance taxes apply to geothermal resource applications producing
1616 more than the volumetric rate set forth by the Department pursuant to § ~~45.1-179.7~~ 45.2-xxx.

1617 **Drafting note: Technical changes.**

1618 § ~~45.1-179.4~~ 45.2-2002. Ownership.

1619 Ownership rights to a geothermal ~~resources shall be~~ resource are in the owner of the
1620 surface property underlain by the geothermal ~~resources~~ resource unless such rights have been
1621 otherwise explicitly reserved or conveyed. Nothing in this section shall divest the people or the
1622 Commonwealth of any rights, title, or interest they ~~may~~ might have in any geothermal ~~resources~~
1623 resource.

1624 **Drafting note: Technical changes are made, including changes pursuant to § 1-227,**
1625 **which states that throughout the Code any word used in the singular includes the plural and**
1626 **vice versa. Language is updated for modern usage.**

1627 § ~~45.1-179.5~~ 45.2-2003. Findings; clarification of nature of the resource.

1628 Geothermal resources are found and hereby declared to be sui generis, being neither ~~a~~
1629 mineral ~~resource~~ resources nor ~~a~~ water ~~resource~~. ~~Mineral estates~~ resources. No mineral estate shall
1630 ~~not~~ be construed to include geothermal resources unless such inclusion is explicit in the terms of
1631 the deed or other instrument of conveyance.

1632 **Drafting note: Changes are made pursuant to § 1-227, which states that throughout**
1633 **the Code any word used in the singular includes the plural and vice versa. The prohibitory**
1634 **language at the end of this section is recast in affirmative form consistent with current**
1635 **drafting practice.**

1636 Article 2.

1637 Resource Regulation.

1638 **Drafting note: Existing Article 2, concerning resource regulation, is retained as**
1639 **proposed Article 2.**

1640 § ~~45.1-179.6~~ 45.2-2004. ~~Duties~~ Powers and ~~responsibilities~~ duties of the Department.

1641 A. The Department ~~shall have and is hereby given~~ has jurisdiction and authority over all
1642 persons and property, public and private, necessary to enforce the provisions of this chapter and
1643 ~~shall have~~ has the power and authority to make and enforce ~~rules,~~ regulations, and orders and do
1644 whatever ~~may~~ is reasonably ~~be~~ necessary to carry out the provisions of this chapter. Any ~~such~~
1645 ~~rules and~~ regulations adopted by the Department pursuant to the provisions of this chapter shall
1646 be ~~promulgated~~ adopted in compliance with ~~the provisions of~~ the Administrative Process Act
1647 (~~Chapter 40 of Title 2.2,~~ § 2.2-4000 et seq.).

1648 § ~~45.1-179.7~~. ~~Additional powers of Department.~~

1649 B. The Department shall:

1650 1. Consult with the Board in carrying out ~~all of~~ its powers and duties ~~and responsibilities~~
1651 pursuant to the provisions of this chapter;

1652 2. Develop a comprehensive geothermal permitting system for the Commonwealth, ~~which~~
1653 ~~shall provide~~ that provides for the exploration and development of geothermal resources;

3. ~~Promulgate such rules and~~ Adopt regulations ~~as may be~~ necessary to provide for geothermal drilling and the exploration for and development of geothermal resources in the Commonwealth; ~~such rules and~~ Such regulations shall be based on a system of correlative rights;

4. Establish minimum temperature levels and volumetric rates in order to determine Department jurisdiction over geothermal resource development. In establishing such temperature levels ~~(i)~~, the Department shall set (i) minimum temperature levels for permitting, well regulations, reservoir management, and allocation of ~~the geothermal resource~~ resources; and (ii) ~~the Department shall set~~ minimum volumetric rates for geothermal leasing, royalties, and severance taxes, as necessary. The Department shall ~~also be responsible for reviewing the review~~ established temperature level and volumetric rate requirements biennially and ~~revising~~ revise the figures as necessary. Revision of temperature levels or volumetric rate requirements shall not occur more often than every two years, and such revision shall not operate retroactively; and

5. Consult with the State Department of Health, as necessary, to protect potable waters of the Commonwealth and ~~in carrying to carry out its the powers and~~ duties ~~and responsibilities of~~ the Department pursuant to the provisions of this chapter.

Drafting note: Existing §§ 45.1-179.6 and 45.1-179.7 are combined. The use of "promulgate," with regard to regulations is changed to "adopt" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process, and the term "rules" is stricken to reflect the use of "regulations" rather than "rules and regulations" per recommendation of the Code Commission in keeping with the definitions in the Administrative Process Act. Technical changes are made and language is updated for modern usage.

§ ~~45.1-179.8~~ 45.2-2005. Reinjection policy.

The Department, the Board, and the State Department of Health shall jointly develop, and revise as necessary, a policy on reinjection of spent geothermal fluids. Such policy shall refer to the reinjection into the ground of waters extracted from the earth in the process of geothermal development, production, or utilization.

1681 **Drafting note: Technical changes.**

1682 § ~~45.1-179.9~~ 45.2-2006. Cancellation or suspension of permit.

1683 ~~Whenever,~~ If the Department determines, after a public hearing held in conjunction with
1684 the Board, ~~the Department determines~~ that a holder of a permit issued pursuant to the provisions
1685 of this chapter ~~is~~ has willfully ~~violating~~ violated any provision of such permit or any provision of
1686 this chapter, the Department may cancel or suspend such permit for cause or impose limitations
1687 on the future use thereof in order to prevent future violations.

1688 **Drafting note: Language is updated for modern usage.**

1689 § ~~45.1-179.10~~ 45.2-2007. Penalties; injunctions.

1690 A. Any person who ~~shall be adjudged to have violated~~ violates any ~~provisions~~ provision
1691 of this chapter ~~shall be~~ is guilty of a misdemeanor ~~and shall be liable to,~~ punishable by a civil
1692 penalty of not less than \$10 ~~nor~~ or more than \$250 for each violation.

1693 B. In addition, upon violation of any ~~of the provisions~~ provision of this chapter, ~~or the~~
1694 ~~regulations~~ regulation of the Department ~~hereunder~~ adopted pursuant to this chapter, the
1695 Department may, either before or after the institution of proceedings ~~for the collection of the~~
1696 ~~penalty imposed by this section for such violation~~ pursuant to subsection A, institute a civil action
1697 in the circuit court ~~wherein~~ where the well is located for injunctive relief to restrain the violation
1698 and for ~~such~~ any other or further relief ~~in the premises as said~~ that the court ~~shall deem~~ deems
1699 proper.

1700 **Drafting note: Technical changes are made, including changes pursuant to § 1-227,**
1701 **which states that throughout the Code any word used in the singular includes the plural and**
1702 **vice versa. Language is updated for modern usage.**

1703 § ~~45.1-179.11~~ 45.2-2008. Judicial review.

1704 Any person aggrieved by a final decision of the Department pursuant to the provisions of
1705 § ~~45.1-179.9~~ 45.2-xxx is entitled to judicial review ~~thereof~~ of such final decision in accordance
1706 with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1707 **Drafting note: A technical change is made and language is updated for modern usage.**

CHAPTER ~~14~~ 21.~~VIRGINIA~~-NUCLEAR ENERGY-~~CONSORTIUM~~.

Drafting note: Existing Chapter 14 (§ 67-1400 et seq.) of Title 67, concerning the Virginia Nuclear Energy Consortium, is retained as proposed Chapter 21. The chapter name is updated to reflect its content.

Article 1.General Provisions.

Drafting note: Existing § 67-1400 is combined with existing § 67-1700 to form proposed Article 1 of Chapter 21, concerning general provisions.

§ ~~67-1400~~ 45.2-2100. Definitions.

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

"Authority" means the Virginia Nuclear Energy Consortium Authority established pursuant to this chapter.

"Board" means the board of directors of the Authority.

"Consortium" means the ~~nonstock, nonprofit corporation~~ Virginia Nuclear Energy Consortium established by the Authority pursuant to § ~~67-1404~~ 45.2-xxx.

"Member" means a member of the Consortium.

Drafting note: Technical changes.

§ ~~67-1700~~ 45.2-2101. Nuclear energy; strategic plan.

A. The Department and the Secretaries of Commerce and Trade and Education shall work in coordination with the ~~Virginia Nuclear Energy Consortium~~ Authority ~~(VNECA)~~, established pursuant to ~~Chapter 14 (§ 67-1400 et seq.)~~ Article 2 (§ 45.2-xxx), and the Virginia Economic Development Partnership Authority, established pursuant to Article 4 (§ 2.2-2234 et seq.) of Chapter 22 of Title 2.2, to develop a strategic plan for nuclear energy as part of the Commonwealth's overall goal of carbon-free energy.

B. Such plan may include (i) the promotion of new technologies and opportunities for innovation, including advanced manufacturing; (ii) the establishment of a collaborative

research center and university nuclear leadership program to promote education in fields that meet the workforce demands of Virginia's nuclear industry; and (iii) recognition of the role of nuclear energy in the Commonwealth's goal of employing 100 percent carbon-free sources of energy by 2050.

C. Such plan shall be completed by October 1, 2020, ~~shall be~~ updated every four years thereafter, and ~~shall be~~ published on the Internet by ~~VNECA~~ the Authority.

Drafting note: This section is relocated from existing Chapter 17 of Title 67. Technical changes are made.

Article 2.

Virginia Nuclear Energy Consortium Authority.

Drafting note: Existing Chapter 14 of Title 67, except for § 67-1400, is retained as proposed Article 2, concerning the Virginia Nuclear Energy Consortium Authority.

~~§ 67-1401~~ 45.2-2102. Virginia Nuclear Energy Consortium Authority established.

There is hereby ~~created and constituted~~ established a political subdivision of the Commonwealth ~~to be~~ known as the Virginia Nuclear Energy Consortium Authority ~~(the Authority)~~. The Authority's exercise of powers conferred by this ~~chapter~~ article shall be deemed to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

Drafting note: Technical changes.

~~§ 67-1402~~ 45.2-2103. Purposes; powers of Authority.

A. The Authority is established for the purposes of making the Commonwealth a national and global leader in nuclear energy and serving as an interdisciplinary study, research, and information resource for the Commonwealth on nuclear energy issues.

B. The Authority is granted all powers necessary or convenient for the carrying out of its statutory purposes, including, ~~but not limited to~~, the following rights, powers, and duties to:

1. Adopt, use, and alter at will a corporate seal;

- 1761 2. Acquire, purchase, hold, use, lease, or otherwise dispose of property, real, personal,
1762 or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out
1763 the purposes of the Authority;
- 1764 3. Adopt bylaws for the management and regulation of its affairs;
- 1765 4. Develop and adopt a strategic plan for carrying out the purposes set out in this ~~chapter~~
1766 [article](#);
- 1767 5. Make and enter into ~~all contracts and agreements~~ [any contract or agreement](#) necessary
1768 or incidental to the performance of its duties, the furtherance of its purposes, and the execution
1769 of its powers under this ~~chapter~~ [article](#), including ~~agreements~~ [an agreement](#) with any person or
1770 federal agency;
- 1771 6. Consult with the General Assembly; federal, state, and local agencies; nonprofit
1772 organizations; private industry; and other potential developers and users of nuclear energy;
- 1773 7. Promote and facilitate agreements among public and private institutions of higher
1774 education in the Commonwealth and other research entities to carry out research projects
1775 relating to nuclear energy;
- 1776 8. Disseminate information and research results;
- 1777 9. Identify and support, in cooperation with Virginia's nuclear entities and the public
1778 and private sectors, the development of education programs related to Virginia's nuclear
1779 industry;
- 1780 10. Provide for the establishment of the Consortium by the Board as provided in § ~~67~~
1781 ~~1404~~ [45.2-xxx](#);
- 1782 11. Develop a policy regarding any interest in intellectual property ~~that may be~~ acquired
1783 or developed by the Consortium;
- 1784 12. In order to fund and support the activities of the Authority and the Consortium, apply
1785 for, solicit, and accept from any source, including any agency of the federal government, the
1786 Commonwealth, or any other state; ~~any municipality, county,~~ [locality](#) or other political
1787 subdivision ~~thereof~~; ~~any member~~; or any private corporation or other entity, (i) grants,

including grants made available pursuant to federal legislation; (ii) aid; or (iii) contributions of money, property, or other things of value, which shall be held, used, and applied for the purposes set out by this chapter;

13. Facilitate the collaboration of members toward ~~the attainment of~~ obtaining grants and ~~the expenditure of~~ expending funds in accomplishing the purposes set out by this chapter;

14. Encourage, facilitate, and support the application, commercialization, and transfer of new nuclear energy technologies;

15. Provide public information and communication about nuclear energy and related educational and job opportunities;

16. Provide advice, assistance, and services to institutions of higher education and to other persons providing services or facilities for nuclear research or graduate education;

17. Foster innovative partnerships and relationships among the Commonwealth, the Commonwealth's public institutions of higher education, private companies, federal laboratories, and not-for-profit organizations to accomplish the purposes set out by this chapter; and

18. Do all acts and things necessary or convenient to carry out the powers granted to it by law.

Drafting note: In subsection B, "but not limited to" is removed following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Technical changes are made for clarity.

~~§ 67-1403~~ 45.2-2104. Board of the Authority.

A. The Authority shall be governed by a board of directors consisting of 17 members appointed as follows:

1. The Director ~~of the Department of Mines, Minerals and Energy~~ or his designee;

2. The President and Chief Executive Officer of the Virginia Economic Development Partnership or his designee;

3. The Chancellor of the Virginia Community College System or his designee;

- 1815 4. The President of Virginia Commonwealth University or his designee;
- 1816 5. The President of the University of Virginia or his designee;
- 1817 6. The President of Virginia Polytechnic Institute and State University or his designee;
- 1818 7. The President of George Mason University or his designee;
- 1819 8. Two individuals ~~to represent an~~ each representing a single institution of higher
- 1820 education in the Commonwealth that is not already represented on the Board, ~~at~~ At least one
- 1821 of ~~which~~ the institutions shall be a private institution of higher education;
- 1822 9. Six individuals, each ~~to represent~~ representing a single business entity located in the
- 1823 Commonwealth that is engaged in activities directly related to the nuclear energy industry;
- 1824 10. One individual ~~to represent~~ representing a nuclear energy-related nonprofit
- 1825 organization; and
- 1826 11. One individual ~~to represent a Virginia-based~~ representing a Commonwealth-based
- 1827 federal research laboratory.
- 1828 B. The members of the Board described in subdivisions A 1 through ~~A~~ 7 shall serve
- 1829 terms coincident with their terms of office.
- 1830 C. The 10 members of the Board described in subdivisions A 8 through ~~A~~ 11 shall be
- 1831 appointed by the Governor. ~~The original terms of five of such members shall end on June 30,~~
- 1832 ~~2015, and the original term of the five other such members shall end on June 30, 2017, all as~~
- 1833 ~~designated by the Governor.~~ After the initial staggering of terms, such members shall be
- 1834 appointed for terms of four years. Vacancies in the membership of the Board shall be filled in
- 1835 the same manner as the original appointments for the unexpired portion of the term. Members
- 1836 of the Board described in subdivisions A 8 through ~~A~~ 11 may serve two successive terms on
- 1837 the Board.
- 1838 D. Any appointment to fill a vacancy on the Board shall be made for the unexpired term
- 1839 of the member whose death, resignation, or removal created the vacancy.
- 1840 E. Meetings of the Board shall be held at the call of the chairman or ~~of~~ any seven
- 1841 members. Nine members of the Board ~~shall~~ constitute a quorum for the transaction of the

business of the Authority. An act of the majority of the members of the Board present at any regular or special meeting at which a quorum is present ~~shall be~~ is an act of the Board.

F. Immediately after appointment, the members of the Board shall enter upon the performance of their duties.

G. The Board shall annually elect from among its members a chairman, a vice-chairman, and a treasurer. The Board shall also elect annually a secretary, who need not be a member of the Board, and may also elect such other subordinate officers, who need not be members of the Board, as it deems proper. The chairman, or in his absence, the vice-chairman, shall preside at ~~all meetings~~ each meeting of the Board. In the absence of both the chairman and vice-chairman, the Board shall appoint a chairman pro tempore, who shall preside at such ~~meetings~~ meeting.

H. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall ~~have forfeited~~ forfeit his ~~or her~~ office or employment by reason of acceptance of membership on the Board or by providing service to the Authority or to the Consortium.

I. On or before November 15 of each year, the Authority shall submit its updated strategic plan, an annual summary of its activities, and recommendations for the support and expansion of the nuclear energy industry in Virginia to the Governor and the Chairmen of the House ~~Appropriations~~ Committee on Appropriations, the Senate ~~Finance~~ Committee on Finance and Appropriations, the House Committee on Labor and Commerce, and the ~~House and~~ Senate Committee on Commerce and Labor ~~Committees~~.

Drafting note: A change is made in subsection H pursuant to § 1-216, which states that a word used in the masculine includes the feminine and neuter. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and updating House and Senate committee names changed in the 2020 Session. Language in subsection C related to the staggering of initial terms is stricken as obsolete. Language is updated for modern usage.

1869 § ~~67-1404~~ 45.2-2105. Establishment of the Consortium.

1870 A. The Board shall provide for the formation, by January 1, 2014, of a nonstock
1871 corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1, not organized for profit, ~~which~~
1872 ~~corporation~~ that shall include in its name the words "Virginia Nuclear Energy Consortium," or
1873 some variation thereof that is approved by the Board.

1874 B. The Consortium shall be established for the purpose of conducting activities useful
1875 in (i) making the Commonwealth a leader in nuclear energy; (ii) serving as an interdisciplinary
1876 study, research, and information resource for the Commonwealth on nuclear energy issues; and
1877 (iii) carrying out the provisions of this ~~chapter~~ article, including raising money on behalf of the
1878 Authority in the corporate and nonprofit community and from other nonstate sources.

1879 C. The membership of the Consortium shall be open to:

- 1880 1. Public or private institutions of higher education in the Commonwealth;
- 1881 2. ~~Virginia-based~~ Commonwealth-based federal research laboratories;
- 1882 3. Nuclear energy-related nonprofit organizations;
- 1883 4. Business entities with operating facilities located in the Commonwealth that are
1884 engaged in activities directly related to the nuclear energy industry; and
- 1885 5. Other individuals or entities whose membership is approved by the board of directors
1886 of the Consortium through a process established by the bylaws of the Consortium.

1887 D. The board of directors of the Consortium shall consist of members selected and
1888 approved by the Consortium pursuant to a process established by its bylaws.

1889 E. The board of directors of the Consortium shall appoint an executive director to serve
1890 as the principal administrative officer of the Consortium. The executive director shall carry out
1891 the specific duties assigned to him by the board of directors, and develop appropriate policies
1892 and procedures for the operation of the Consortium; employ ~~such~~ persons and secure ~~such~~
1893 services as ~~may be~~ required to carry out the purposes of the Consortium; expend funds as
1894 authorized by the Authority; and accept moneys from federal or private sources on behalf of
1895 the Authority, including moneys contributed by Consortium members to the Authority, for cost-

sharing on nuclear energy research or projects. The executive director and any other employee of the Consortium (i) shall be compensated in the manner provided by the board of directors of the Authority, (ii) shall not be subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.), and (iii) shall not be deemed to be an officer or employee for purposes of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

F. The articles of incorporation of the Consortium shall provide that upon dissolution the net assets of the Consortium shall be transferred to the Authority.

G. The Consortium shall not be deemed to be a state or governmental agency, advisory agency, public body, or agency or instrumentality for purposes of ~~Chapters~~ Chapter 8 (§ 2.2-800 et seq.), 18 (§ 2.2-1800 et seq.), 24 (§ 2.2-2400 et seq.), 29 (§ 2.2-2900 et seq.), 31 (§ 2.2-3100 et seq.), 37 (§ 2.2-3700 et seq.), 38 (§ 2.2-3800 et seq.), 43 (§ 2.2-4300 et seq.), 44 (§ 2.2-4400 et seq.), 45 (§ 2.2-4500 et seq.), 46 (§ 2.2-4600 et seq.), ~~and or~~ 47 (§ 2.2-4700 et seq.) of Title 2.2, Chapter 14 (§ 30-130 et seq.) of Title 30, or Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1.

H. The board of directors of the Consortium shall adopt, alter, and repeal bylaws governing the manner in which its business shall be transacted and the manner in which the activities of the Consortium shall be conducted.

I. The Consortium shall report on all of its ~~non-proprietary~~ nonproprietary activities at least twice a year to the Authority.

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

§ ~~67-1405~~ 45.2-2106. Moneys of Authority.

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give such security for such deposits, if required by the Authority. The moneys

in such accounts shall be paid out on the warrant or other orders of such persons as the Authority may authorize authorizes to execute such warrants or orders.

Drafting note: Language is updated for modern usage.

§ ~~67-1406~~ 45.2-2107. Audits; external reviews.

A. The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the financial accounts of the Authority. The audit report and any nonproprietary information provided to the auditor in connection with the audit shall be made available to the public, upon request, in accordance with the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. The Authority, if it receives state funds, shall be subject to periodic external review either (i) under the provisions of the Legislative Program Review and Evaluation Act (§ 30-64 et seq.) or (ii) by an entity appointed for that purpose by the Governor.

Drafting note: Technical change.

~~CHAPTER 21.~~

~~EXPLORATION FOR URANIUM ORE.~~

Article 3.

Exploration for Uranium Ore.

Drafting note: Existing Chapter 21, concerning exploration for uranium ore, is retained as proposed Article 3. Throughout the article, references to the Chief of the Division of Mines, which predate the formation of the Department in 1985, are changed to refer to the Director of the Department.

~~§ 45.1-272. Legislative findings; declaration of policy.~~

~~The mining of uranium within the Commonwealth has the potential to provide its citizens with employment opportunities and other economic benefits.~~

~~It also offers the Commonwealth and the nation the possibility of developing valuable resources that can be used to produce energy in a clean, efficient manner and lessen this country's dependence on foreign energy supplies.~~

~~At the same time, the General Assembly finds that the improper and unregulated exploration for uranium can adversely affect the health, safety, and general welfare of the citizens of this Commonwealth.~~

~~The General Assembly also finds that the adoption of additional statutes during the 1983 Session of the General Assembly may be necessary in order to assure that any uranium mining and milling which may occur in the Commonwealth will not adversely affect the environment or the public health and safety.~~

~~The purposes of this chapter are to encourage and promote the safe and efficient exploration for uranium resources within the Commonwealth, and to assure, pursuant to § 45.1-284 of this Code, that uranium mining and milling will be subject to statutes and regulations which protect the environment and the health and safety of the public.~~

Drafting note: This section, enacted by Acts 1982, c. 269, is currently not set out. This section, containing a statement of legislative findings and a declaration of policy, is stricken in accordance with the Code Commission's policy that such statements do not have general and permanent application and thus are not to be included in the Code.

~~§ 45.1-273~~ 45.2-2108. Definitions.

~~The following words shall have the meanings respectively ascribed thereto:~~ As used in this article, unless the context requires a different meaning:

"Exploration activity" means and ~~shall be~~ is limited to the drilling of test holes or stratigraphic or core holes of a depth in excess of ~~fifty~~ 50 feet for the purpose of determining the location, quantity, or quality of uranium ore.

"Person" ~~shall mean~~ means any individual, firm, corporation, partnership, association, or other legal entity.

"Usable quality water" ~~is defined as ground water~~ means groundwater that is used or can be used for a beneficial purpose, including, ~~but not limited to,~~ a domestic, livestock, or irrigation ~~uses~~ use.

1975 **Drafting note:** The definition of "usable quality water" is relocated from existing
1976 § 45.1-277 and "but not limited to" is removed from that definition following the term
1977 "including" on the basis of § 1-218, which states that throughout the Code "'Includes'
1978 means includes, but not limited to." Technical changes are made, including changes
1979 pursuant to § 1-227, which states that throughout the Code any word used in the singular
1980 includes the plural and vice versa. Language is updated for modern usage.

1981 § ~~45.1-279~~ 45.2-2109. ~~Rules and regulations~~ Regulations.

1982 The Director shall ~~promulgate such rules and~~ in accordance with the Administrative
1983 Process Act (§ 2.2-4000 et seq.), adopt regulations as may be necessary and proper to carry out
1984 the provisions of this ~~chapter~~ article.

1985 **Drafting note:** The term "promulgate such rules and regulations" is changed to
1986 "adopt regulations" in keeping with recent title revisions because "adopt" is more widely
1987 used and includes the promulgation process, and the term "rules" is stricken to reflect
1988 the use of "regulations" rather than "rules and regulations" per recommendation of the
1989 Code Commission in keeping with the definitions in the Administrative Process Act. A
1990 reference to the Administrative Process Act is added from existing § 45.1-281.

1991 § ~~45.1-274~~ 45.2-2110. Permit for exploration activity required; fee.

1992 A. It ~~shall be~~ is unlawful for any person to commence any exploration activity ~~as defined~~
1993 ~~herein~~ without first obtaining a permit to do so from the ~~Chief~~ Director. The application for the
1994 permit shall be in ~~such a~~ form ~~as the Chief may prescribe~~ Director prescribes and shall be
1995 accompanied by a fee of \$250 and ~~such by any~~ other information ~~as may be~~ required by this
1996 ~~chapter~~ article.

1997 B. The application for a permit to carry out ~~any~~ exploration activity shall be
1998 accompanied by a bond, payable to the Commonwealth, with surety acceptable to the ~~Chief~~
1999 Director. The bond shall ensure compliance with the provisions of this ~~chapter~~ article and any
2000 regulations ~~promulgated~~ adopted hereunder relating to the drilling, redrilling, plugging ~~and, or~~

2001 abandoning of any exploration activity. The bond shall be set by the ~~Chief~~ Director in ~~such an~~
2002 amount ~~as may be~~ deemed reasonable and necessary.

2003 C. An initial permit shall be valid for a period of one year; and may be renewed ~~for a~~
2004 ~~like period of time~~ annually.

2005 **Drafting note: The term "regulations promulgated" is changed to "regulations**
2006 **adopted" in keeping with recent title revisions because "adopt" is more widely used and**
2007 **includes the promulgation process. References to the Chief of the Division of Mines, which**
2008 **predate the formation of the Department in 1985, are changed to refer to the Director of**
2009 **the Department. Technical changes are made and language is updated for modern usage.**

2010 § ~~45.1-275~~ 45.2-2111. Maps or plats of proposed exploration activity area.

2011 Before undertaking any exploration activity on any tract of land, the person proposing
2012 the exploration activity shall prepare or have prepared and file with the ~~Chief~~ Director, together
2013 with the application required by § ~~45.1-274~~ 45.2-xxx, an accurate map, on a scale ~~to be~~ stated
2014 thereon, showing the location of the proposed exploration activity; the courses and distances of
2015 such activity from two permanent points or landmarks on the tract; the approximate location
2016 areas in which test holes or core or stratigraphic holes may be drilled; the name of the owner;
2017 and boundaries and acreage of the tract on which the exploration activity is to take place.

2018 **Drafting note: A reference to the Chief of the Division of Mines, which predates**
2019 **the formation of the Department in 1985, is changed to refer to the Director of the**
2020 **Department. A technical change is made and language is updated for modern usage.**

2021 § ~~45.1-276~~ 45.2-2112. Abandoning exploration hole; affidavits required.

2022 Within ~~forty-five~~ 45 days after the abandonment of any exploration hole, the permittee
2023 shall notify the ~~Chief~~ Director that such exploration hole has been plugged and abandoned,
2024 giving the location of ~~such the~~ the hole. The permittee shall submit an affidavit, ~~in triplicate, which~~
2025 ~~shall set~~ setting forth the time and manner in which the hole was plugged and filled. One copy
2026 of ~~this the~~ the affidavit shall be retained by the permittee, one shall be sent to the State Geologist,
2027 and the third shall be ~~mailed~~ sent to the ~~Chief~~ Director.

Drafting note: A technical change is made and language is updated for modern usage. The requirement that the affidavit be submitted in triplicate is deleted and the mailing requirement is replaced by a requirement that a copy be sent to the Director. References to the Chief of the Division of Mines, which predate the formation of the Department in 1985, are changed to refer to the Director of the Department.

§ ~~45.1-277~~ 45.2-2113. Plugging.

The plugging of an exploration ~~holes~~ hole shall be as follows:

1. ~~All~~ Each exploration ~~holes~~ hole shall be adequately plugged with cement from the bottom of the hole upward to a point three feet below plow depth. The remainder of the hole between the top of the plug and the surface shall be filled with cuttings or nontoxic material.

2. If multiple aquifers alternating usable quality water and salt water zones, or other conditions determined by the ~~Chief~~ Director to be potentially deleterious to surface water or ~~ground-water~~ groundwater are encountered, the conditions ~~must~~ shall be isolated immediately by cement plugs. ~~"Usable quality water" is defined as ground water that is used or can be used for a beneficial purpose, including, but not limited to, domestic, livestock, or irrigation uses.~~

Each hole shall be plugged with cement to prevent water from flowing into or out of the hole or mixing within the hole. The length of the plug shall be determined by the ~~Chief~~ Director based on available data on the specific site.

3. Each exploration hole shall be plugged as soon as reasonably practical after drilling, unless multiple aquifers are encountered.

4. Alternative plugging procedures and materials may be utilized ~~when~~ if the applicant ~~has demonstrated~~ demonstrates to the ~~Chief's~~ Director's satisfaction that the alternatives will protect ~~ground-waters~~ groundwater and comply with the provisions of this ~~chapter~~ article. In the event that a hole is more suitably plugged with a nonporous material other than cement, the material shall have characteristics at least equal to cement.

5. In the event that an exploration hole is to remain unplugged pursuant to the provisions of § ~~45.1-278~~ [45.2-xxx](#), the procedure contained in subdivision 2, if applicable, shall be applied and the exploration hole shall be plugged to the extent required by that ~~paragraph~~ [subdivision](#).

Drafting note: The second sentence of subdivision 2, which contains a definition of "usable quality water," is relocated to § 45.2-xxx, the definitions section for the article. Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. References to the Chief of the Division of Mines, which predate the formation of the Department in 1985, are changed to refer to the Director of the Department. Technical changes are made and language is updated for modern usage.

§ ~~45.1-278~~ [45.2-2114](#). Developing [an](#) exploration hole as [a](#) water well.

If any exploration hole drilled for the purpose of determining the location, quantity, or quality of uranium ore indicates a stratum or source of potable fresh water ~~which~~ [that](#) could be developed pursuant to established ~~EPA~~ [U.S. Environmental Protection Agency](#) safe drinking water standards for a community water system, upon the request of the owner of the property on which the exploration hole is located and ~~on~~ [following](#) application to and approval by the ~~Chief~~ [Director](#), who shall secure concurrence from the [State](#) Department of Health, the well, in lieu of being plugged and abandoned, may be developed and completed as a water well. The development and completion of an exploration hole as a water well shall be performed in accordance with applicable state water control ~~law~~ [laws](#) and ~~regulation~~ [regulations](#).

Drafting note: The standard reference to the U.S. Environmental Protection Agency is substituted for a short reference and a reference to the Chief of the Division of Mines, which predates the formation of the Department in 1985, is changed to refer to the Director of the Department. Language is updated for modern usage.

§ ~~45.1-280~~ [45.2-2115](#). Right of inspection by ~~Chief~~ [Director](#).

For the purposes of carrying out the provisions of this ~~chapter~~ [article](#), the ~~Chief~~ [Director](#) is hereby vested with authority to inspect at reasonable times and in a reasonable manner any

2080 area ~~or areas~~ for which he has received an application for a permit, or has granted a permit, for
2081 exploration activity.

2082 **Drafting note: Technical changes are made, including a change pursuant to § 1-**
2083 **227, which states that throughout the Code any word used in the singular includes the**
2084 **plural and vice versa. References to the Chief of the Division of Mines, which predate the**
2085 **formation of the Department in 1985, are changed to refer to the Director of the**
2086 **Department. Language is updated for modern usage.**

2087 ~~§ 45.1-281. Administrative Process Act applicable.~~

2088 ~~The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall be applicable~~
2089 ~~to the provisions of this chapter.~~

2090 **Drafting note: This section, which refers to the Administrative Process Act, is**
2091 **deleted as unnecessary and a reference to the Administrative Process Act is added to §**
2092 **45.2-xxx [existing § 45.1-279].**

2093 ~~§ 45.1-283~~ 45.2-2116. Uranium mining permit applications; ~~when accepted;~~ uranium
2094 mining deemed to have significant effect on surface.

2095 Notwithstanding any other provision of law, ~~permit applications~~ no application for a
2096 uranium mining permit shall ~~not~~ be accepted by any agency of the Commonwealth ~~prior to July~~
2097 ~~1, 1984, and~~ until a program for permitting uranium mining is established by statute. For the
2098 purpose of construing the definition of "mining" in § ~~45.1-180 (a)~~ 45.2-xxx, uranium mining
2099 ~~shall be~~ is deemed to have a significant effect on the surface.

2100 **Drafting note: The prohibitory language of this section is recast in affirmative**
2101 **form consistent with current drafting practice and the obsolete 1984 date is stricken.**
2102 **Technical changes are made, including changes pursuant to § 1-227, which states that**
2103 **throughout the Code any word used in the singular includes the plural and vice versa.**
2104 **Language is updated for modern usage.**

2105 ~~§ 45.1-284~~ 45.2-2117. State and local authority.

2106 Nothing ~~contained~~ in this ~~chapter~~ article shall be construed to alter the authority of any
2107 state or local governing body, including ~~the authorities~~ any authority conferred under Chapter
2108 22 (§ 15.2-2200 et seq.) of Title 15.2, ~~relative~~ relating to ~~matters which are~~ any matter that is
2109 the subject of this ~~chapter~~ article.

2110 **Drafting note: Technical changes are made, including changes pursuant to § 1-227,**
2111 **which states that throughout the Code any word used in the singular includes the plural**
2112 **and vice versa. Language is updated for modern usage and clarity.**

2113 § ~~45.1-285~~ 45.2-2118. Confidentiality of logs, surveys, and reports.

2114 A. The ~~Chief~~ Director shall hold confidential all logs, surveys, plats, and reports filed
2115 under this ~~chapter~~ article by ~~those~~ any person engaged in the exploration for uranium for a
2116 period of two years after the completion of the exploratory activities.

2117 ~~Further, upon~~ B. Upon written request by any person engaged in ~~the~~ exploration for
2118 uranium, the ~~Chief~~ Director shall hold confidential all logs, surveys, plats, and reports filed
2119 under this chapter for ~~all an~~ additional two-year ~~periods. Such request shall be granted by the~~
2120 Chief period. The Director shall grant such request if the requesting party certifies that he
2121 considers all such information to be of a proprietary nature relating to his competitive rights.
2122 The requesting party may renew his request every two years.

2123 C. Nothing in this section shall be construed to deny ~~to~~ the State Geologist ~~the~~ access to
2124 ~~all logs, surveys, plats and reports~~ any log, survey, plat, or report filed under this ~~chapter~~ article.
2125 ~~The~~ However, the State Geologist, ~~however,~~ shall ~~be bound to~~ hold ~~this~~ such information
2126 confidential to the same extent as the ~~Chief is bound~~ Director.

2127 **Drafting note: The ambiguous reference to confidentiality "for all additional two-**
2128 **year periods" is stricken and a two-year renewal provision is added. Technical changes**
2129 **are made, including changes pursuant to § 1-227, which states that throughout the Code**
2130 **any word used in the singular includes the plural and vice versa. References to the Chief**
2131 **of the Division of Mines, which predate the formation of the Department in 1985, are**

changed to refer to the Director of the Department. Language is updated for modern usage and subsection designations are added for clarity.

~~§ 45.1-282~~ 45.2-2119. ~~Penalties~~ Civil penalty.

A. Any person who violates any provision of this ~~chapter~~ article, or who fails, neglects, or refuses to comply with any ~~rule or~~ regulation ~~issued~~ adopted by the Director, or final order of a court lawfully issued, shall be subject to a civil penalty, not to exceed \$10,000, for each violation. Each day of violation shall constitute a separate offense. All civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Minerals Reclamation Fund pursuant to § 45.2-xxx [existing § 45.1-197.8].

B. The ~~Chief shall have the authority to~~ Director may restrain violations of this ~~chapter~~ article in accordance with the provisions of ~~§ 45.1-358~~ 45.2-xxx.

Drafting note: This section, which provides for civil penalties, is relocated to the end of the article. The term "regulation issued" is changed to "regulation adopted" in keeping with recent title revisions because "adopt" is more widely used and includes issuance. A provision is added directing civil penalties to an appropriate nonreverting fund consistent with current drafting practice. A reference to the Chief of the Division of Mines, which predates the formation of the Department in 1985, is changed to refer to the Director of the Department. Technical changes are made and language is updated for modern usage.

~~Article 2.~~

~~Uranium Administrative Group; Functions. [Not set out]~~

Drafting note: Existing Article 2 (§§ 45.1-285.1 through 45.1-285.10) of Chapter 21, enacted by Acts 1983, c. 3, which is currently not set out in the Code, is recommended for repeal as obsolete because the Uranium Administrative Group created by the article was required by § 45.1-285.5 to submit its report by December 1, 1983 and is no longer in existence.

~~§ 45.1-285.1. Findings; declaration of policy. [Not set out]~~

~~The General Assembly finds: (i) that while uranium mining and milling activity can generate substantial benefits, it also raises a wide range of environmental and other local concerns; and (ii) that a preliminary study, identifying many potential environmental and other effects of uranium development and describing procedures and responsibilities that the Commonwealth and a proponent would be obligated to accept if development were to proceed, has not identified any environmental or public health concern that could preclude uranium development in Virginia.~~

~~The General Assembly further finds, however, that a possibility exists that certain impacts of uranium development activity may reduce or potentially limit certain uses of Virginia environment and resources, and that therefore additional evaluation of the costs and benefits of such activity is necessary before a final decision can be made regarding its acceptability in the Commonwealth. The General Assembly encourages private industry to participate in further studies and analyses of the costs and benefits of uranium mining and milling activity in the Commonwealth. Evaluation of these costs and benefits will be enhanced by further studies pertaining to Pittsylvania County where preliminary study has focused and where uranium development activity is currently contemplated by proponents.~~

~~The General Assembly emphasizes that uranium mining and milling activity presents issues of great concern to the public. It therefore encourages public participation in the deliberations concerning these issues.~~

Drafting note: This section is recommended for repeal as obsolete.

~~§ 45.1-285.2. Definitions. [Not set out]~~

~~The following words shall have the meanings respectively ascribed thereto:~~

~~"Commission" shall mean the Virginia Coal and Energy Commission.~~

~~"Decommissioning" shall mean the process by which mining, milling and tailings management operations are terminated and the associated facilities removed or rendered inactive.~~

2185 ~~"Group" shall mean the Uranium Administrative Group established in § 45.1-285.3 of~~
2186 ~~this Code.~~

2187 ~~"Milling" shall mean the operation by which uranium ore is processed or treated to~~
2188 ~~extract uranium.~~

2189 ~~"Mining" shall mean any activity meeting the definition of mining in § 45.1-180(a) of~~
2190 ~~Chapter 16 of this title. For the purpose of construing § 45.1-180(a) of Chapter 16 of this title,~~
2191 ~~uranium mining shall be construed to have a significant effect on the surface.~~

2192 ~~"Person" shall mean any individual, firm, corporation, partnership, association or other~~
2193 ~~legal entity.~~

2194 ~~"Reclamation" shall mean any activity meeting the definition of reclamation in § 45.1-~~
2195 ~~180(k) of Chapter 16 of this title.~~

2196 ~~"Tailings" shall mean the residue remaining after extraction of uranium from uranium~~
2197 ~~ore whether or not the residue is left in piles, but shall not include ore bodies or ore stock piles.~~

2198 ~~"Tailings management" means the methods by which tailings are handled, stored or disposed~~
2199 ~~of.~~

2200 **Drafting note: This section is recommended for repeal as obsolete.**

2201 ~~§ 45.1-285.3. Uranium Administrative Group. [Not set out]~~

2202 ~~In order to effectuate the provisions of this Chapter, there is created a Uranium~~
2203 ~~Administrative Group which shall be composed of the following: the Chairman of the~~
2204 ~~Commission or his designee who shall also serve as Chairman of the Group; the Administrator~~
2205 ~~of the Council on the Environment or her designee; the Executive Director of the State Water~~
2206 ~~Control Board; the Executive Director of the State Air Pollution Control Board; the~~
2207 ~~Commissioner of the State Board of Health; the Director of the Department of Conservation~~
2208 ~~and Economic Development; the Commissioner of the Department of Agriculture and~~
2209 ~~Consumer Services; the Director of the Division of Industrial Development; one member to be~~
2210 ~~designated by the local governing body of Pittsylvania County; one member to be designated~~
2211 ~~by the local governing body of Halifax County; two members to be designated by the Chairman~~

~~of the Commission from the State at large and two members to be designated by the Governor from the State at large.~~

Drafting note: This section is recommended for repeal as obsolete.

~~§ 45.1-285.4. Employment of consultants; other support. [Not set out]~~

~~In performing the duties established in this article, the Group shall have the authority to employ consultants and each state agency representative shall designate one or more individuals from the respective agencies to assist in the administrative functions necessitated by the duties established in this chapter. For purposes of the performance of these duties, the individuals shall be directly responsible to the Chairman of the Group.~~

Drafting note: This section is recommended for repeal as obsolete.

~~§ 45.1-285.5. Duties of the Group. [Not set out]~~

~~The Group shall perform the following duties:~~

~~A. Review, comment on and approve any proposals submitted by persons for studying the effects of uranium development activity at specific sites in Pittsylvania County to determine whether such study proposals address each of the statutory criteria established by § 45.1-285.6 of this article.~~

~~B. Evaluate, in light of the statutory criteria established by § 45.1-285.6 of this Code and with the aid of independent consultants, and participation by the public, if appropriate, any study submitted by private parties which analyzes the effects of uranium development activity at specific sites in Pittsylvania County.~~

~~C. Based on studies that analyze each of the statutory criteria established by § 45.1-285.6 of this Code submitted pursuant to a study plan filed in accordance with § 45.1-285.9, present a report to the Commission by December 1, 1983. The report shall:~~

~~1. Explain with respect to each specific site in Pittsylvania County that has been subject to a study meeting the criteria of this chapter: the costs and benefits of permitting uranium development at the specific site, including any beneficial or adverse effects that cannot be quantified and a description of the persons or classes of persons likely to receive the benefits or~~

~~bear the costs; the reasonable alternatives for achieving the identified benefits of the uranium development activity, including an alternative siting analysis; and~~

~~2. In light of the results of site-specific studies under this chapter, discuss the advantages and disadvantages of enacting legislation under which permits could be issued for uranium mining and milling in Pittsylvania County or at specified locations therein; and~~

~~3. Include draft legislation for consideration of the Commission, if appropriate, regulating the mining and milling of uranium in Pittsylvania County and reasonably assuring that appropriate planning, design, operating, decommissioning and post-closure procedures are followed to minimize adequately any adverse environmental or human health consequences; and~~

~~4. Discuss the advantages and disadvantages of seeking agreement with the federal government providing for discontinuance of the federal government's responsibility for regulating uranium milling and tailings management. In making this recommendation the Group shall assess the adequacy of existing federal and state health, safety and environmental standards pertaining to uranium development activity; and~~

~~5. Discuss the Group's consultation with federal and state agencies, including the United States Nuclear Regulatory Commission, having expertise relevant to regulating uranium development activity; and~~

~~6. The report of the Group to the Commission may include specific recommendations if they are deemed appropriate, or~~

~~7. Advise the Commission that additional studies or a continuation of existing studies are necessary in order to adequately report under paragraphs 1-6 of this section.~~

Drafting note: This section is recommended for repeal as obsolete.

~~§ 45.1-285.6. Study criteria. [Not set out]~~

~~The Group shall base its analysis of the costs and benefits of permitting uranium development at specific sites in Pittsylvania County on the criteria set out in this section. Any study submitted to the Group pursuant to this chapter shall address each of these criteria. The~~

2266 ~~Group shall ensure that it shall receive information, from whatever sources, adequate to analyze~~
2267 ~~each of the criteria:~~

2268 ~~A. Site suitability including geological, hydrological, hydrogeological, seismological,~~
2269 ~~biological and meteorological characteristics, demography, and current uses of the land in the~~
2270 ~~vicinity of the site.~~

2271 ~~B. Analysis of all pathways by which radionuclides and other contaminants may enter~~
2272 ~~or affect ground waters, receiving surface waters, and the air and the biota and be transmitted~~
2273 ~~to critical receptors as a result of mining, milling and tailings management at the specific site;~~
2274 ~~the estimated cumulative dose to such critical receptors; and available data on the baseline~~
2275 ~~radioactive, chemical and physical characteristics of the ground waters, receiving surface~~
2276 ~~waters, air and the biota identified in the pathway analysis as potentially subject to increased~~
2277 ~~levels of contamination.~~

2278 ~~C. Plans for monitoring changes from the baseline radioactive and chemical~~
2279 ~~characteristics of the ground water, receiving surface waters, air and the biota identified in the~~
2280 ~~pathway analysis as potentially subject to increased levels of contamination.~~

2281 ~~D. The qualifications of the potential applicant or applicants to conduct uranium~~
2282 ~~development activity at the specific site, including technical and financial qualifications and~~
2283 ~~past operating experience and practices.~~

2284 ~~E. The specific nature of the proposed mining, milling and tailings management activity,~~
2285 ~~including:~~

2286 ~~1. With respect to mining activity, the type of mining operation and the equipment to be~~
2287 ~~used; the anticipated duration of the mining operation and the number of acres to be affected; a~~
2288 ~~detailed map of the site; the result of test borings or core samplings from the site; the amount~~
2289 ~~of soil and waste rock to be stockpiled; plans for surface water and ground water drainage and~~
2290 ~~diversion facilities; plans for domestic and mine water and waste handling systems; the quantity~~
2291 ~~and quality of atmospheric releases and the methods for controlling such releases; and plans for~~
2292 ~~protecting the occupational health and safety of employees working in the mines.~~

~~2. With respect to milling activity, the capacity of the mill; the processes to be used in milling and ore extraction; the reagents and processing materials to be used; flow diagrams and materials balance for raw materials, reagents, processing materials, finished products and by-products for the various process units; the quantity of water to be used and the water balance in the plant; the quantity and quality of liquid and solid wastes to be produced; the quantity and quality of atmospheric releases and the methods for controlling such releases; the methods for monitoring emissions from the processing facilities; the method for conveying tailings and wastewater from the mill; and plans for protecting the occupational health and safety of employees working in the mill.~~

~~3. With respect to tailings management, the quantity and characteristics of the tailings; the method of disposal; the size of the tailings disposal area; the method of liquid effluent treatment; the hydrology, hydrogeology, and surficial and bedrock geology of the disposal area; stability analysis for all embankments; seepage management techniques; seepage and ground water monitoring facilities; treatment systems for the removal of solids, radionuclides, heavy metals and other substances from wastewaters; systems for diversion of fresh water away from the tailings management area; and the quantity and quality of atmospheric releases and the methods for controlling such releases.~~

~~F. Plans, during active operations, transition and post closure phases, for decommissioning, reclamation and securing of the mining, milling and tailings management facilities, including any research required to demonstrate the effectiveness of such plans.~~

~~G. Analysis of potential accidents in connection with the proposed mining, milling, tailings management, decommissioning and post closure activity and contingency plans for responding to such accidents.~~

~~H. The extent of radiological, or nonradiological impacts resulting from mining, milling, tailings management, decommissioning and post closure activities with particular attention to the following possible effects:~~

2319 ~~1. The contamination of local ground water and surface water by discharges from~~
2320 ~~mining, milling and tailings management, and the loss of such waters as suitable water supply~~
2321 ~~sources, including the extent to which applicable regulatory standards may be exceeded.~~

2322 ~~2. The reduction or loss of yields from wells due to mine dewatering, or other mining,~~
2323 ~~milling or tailings management activities, and the subsequent drawdown of the surrounding~~
2324 ~~water table.~~

2325 ~~3. The loss of use of local ground water and surface water sources resulting from the~~
2326 ~~migration of radionuclides and other contaminants from the former mining or tailings area after~~
2327 ~~decommissioning, including the extent to which applicable regulatory standards may be~~
2328 ~~exceeded.~~

2329 ~~4. The need to avoid full-time human residency within a certain radius of the property~~
2330 ~~during operations due to emission of radon, other radionuclides, or dust from mining, milling~~
2331 ~~and tailings management.~~

2332 ~~5. The permanent preclusion of the tailings management area after decommissioning~~
2333 ~~from certain land use activities.~~

2334 ~~6. Any other effects that would impair use of the local environment during operations~~
2335 ~~or after decommissioning.~~

2336 ~~I. The socioeconomic effects of the uranium development activity at the specific site~~
2337 ~~and its associated regulation on the local community and the Commonwealth.~~

2338 ~~J. A description of the costs and benefits of allowing the proposed uranium development~~
2339 ~~activity to proceed at the specific site, including any beneficial or adverse effects that cannot be~~
2340 ~~quantified and a description of the persons or groups of persons likely to receive the benefits or~~
2341 ~~bear the costs; a description of reasonable alternatives for achieving the identified benefits of~~
2342 ~~the uranium development activity, including an alternative siting analysis; and an explanation~~
2343 ~~of how, if at all, the benefits of uranium development activity at the specific site are likely to~~
2344 ~~justify the costs and adverse effects and an explanation of why conducting uranium~~
2345 ~~development activity at that site is preferable to conducting it at alternative sites.~~

2346 **Drafting note: This section is recommended for repeal as obsolete.**

2347 ~~§ 45.1-285.7. Additional factors. [Not set out]~~

2348 ~~The Group is authorized to specify criteria in addition to those enumerated in paragraphs~~
2349 ~~A through J of § 45.1-285.6 of this Code as it deems necessary to formulate its report to the~~
2350 ~~Commission.~~

2351 **Drafting note: This section is recommended for repeal as obsolete.**

2352 ~~§ 45.1-285.8. Recommendations to the General Assembly. [Not set out]~~

2353 ~~Upon the receipt of the report of the Group, the Commission shall hold one or more~~
2354 ~~public hearings in Pittsylvania County, Halifax County and the City of Richmond and shall~~
2355 ~~thereafter report to the General Assembly with specific recommendations concerning the~~
2356 ~~subject matter of the report, together with specific draft legislation implementing those~~
2357 ~~recommendations, if appropriate.~~

2358 **Drafting note: This section is recommended for repeal as obsolete.**

2359 ~~§ 45.1-285.9. Study filing procedure. [Not set out]~~

2360 ~~Any person who intends to file a study plan with the Group pursuant to this chapter must~~
2361 ~~submit, as a condition of filing such a study, the following items to the Group within thirty days~~
2362 ~~of the enactment of this act or at such later time: (i) notice of intent to file a study and (ii) a~~
2363 ~~schedule for completing and filing the study.~~

2364 **Drafting note: This section is recommended for repeal as obsolete.**

2365 ~~§ 45.1-285.10. Applicability of studies under this chapter to any future licensing~~
2366 ~~proceedings. [Not set out]~~

2367 ~~In the event that a procedure for licensing uranium development activity in Pittsylvania~~
2368 ~~County is established by statute or regulation, the information in any study submitted to the~~
2369 ~~Group pursuant to this chapter may be used in part or in full to meet any requirement of the~~
2370 ~~licensing procedure which such information, in the judgment of any agency responsible for~~
2371 ~~interpreting such requirement, is sufficient to fulfill. However, no finding or conclusion of any~~

2372 ~~such study shall be binding on any agency with respect to any issue in any future licensing~~
2373 ~~proceeding.~~

2374 **Drafting note: This section is recommended for repeal as obsolete.**

2375 #

Drafting note: This document contains all sections of Title 67 that are not proposed for incorporation into Title 45.2 and provides for their incorporation into other titles.

~~CHAPTER 4.~~

~~CLEAN COAL PROJECTS.~~

TITLE 10.1. CONSERVATION.

CHAPTER 13.

AIR POLLUTION CONTROL BOARD.

Article 5.

Clean Coal Projects.

Drafting note: Existing Chapter 4 (§ 67.400 et seq.) of Title 67, concerning clean coal projects, is relocated as proposed Article 5 in Chapter 13 of Title 10.1, comprising §§ 10.1-1332 and 10.1-1333.

§ ~~67-400~~ 10.1-1332. Definitions.

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

"Center" means the Virginia Center for Coal and Energy Research.

"Clean coal project" means any project that uses any technology, including ~~technologies~~ a technology applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that (i) will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, ~~which~~ and is not in widespread use; or (ii) is otherwise defined as clean coal technology pursuant to 42 U.S.C. § 7651n.

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

§ ~~67-401~~ 10.1-1333. Permitting process for clean coal projects.

To the extent authorized by federal law, the ~~State Air Pollution Control~~ Board shall implement permit processes that facilitate the construction of clean coal projects in the Commonwealth by, among such other actions as it deems appropriate, giving priority to processing permit applications for clean coal projects.

Drafting note: Technical change.

~~§§ 67-402, 67-403. Expired.~~

Drafting note: Expired July 1, 2009, pursuant to Acts 2006, c. 939, cl. 6.

~~Chapter 8.~~

~~Motor Vehicle Fuel Efficiency Standards.~~

TITLE 33.2. HIGHWAYS AND OTHER SURFACE TRANSPORTATION SYSTEMS.

CHAPTER 1.

DEFINITIONS AND GENERAL PROVISIONS.

Drafting note: Existing Chapter 8 (§§ 67-800 and 67-801) of Title 67, concerning motor vehicle fuel efficiency standards, is relocated to the end of Chapter 1 (§ 33.2-100 et seq.) of Title 33.2.

~~§ 67-800 33.2-120. Definitions~~ Efforts to increase CAFE standards.

A. As used in this section, unless the context requires a different meaning, "CAFE standards" means the corporate average fuel economy standards for passenger cars and light trucks manufactured for sale in the United States that have been implemented pursuant to the federal Energy Policy and Conservation Act of 1975 (~~P.L.~~ P.L. 94-163), as amended.

~~§ 67-801. Efforts to increase CAFE standards.~~

B. It is the policy of the Commonwealth to support federal action that provides for:

1. An increase in the CAFE standards from the current standard by promoting performance-based tax credits for advanced technology, fuel-efficient vehicles to facilitate the introduction and purchase of such vehicles; and

2. Market incentives and education programs to build demand for high-efficiency, cleaner vehicles, including tax incentives for highly efficient vehicles.

Drafting note: Existing §§ 67-800 and 67-801 are combined and technical changes are made. The word "in," apparently omitted in error from subdivision B 1, is inserted.

~~Chapter 5.~~

~~Biodiesel Fuel.~~

CHAPTER 2.

TRANSPORTATION ENTITIES.

Article 2.

Commonwealth Transportation Board; Powers and Duties

Drafting note: Existing Chapter 5 (§ 67-500 et seq.) of Title 67, concerning biodiesel fuel, is relocated to the end of Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2.

~~§ 67-500~~ 33.2-221.1. Definitions Use of biodiesel and other alternative fuels in vehicles providing public transportation.

A. As used in this ~~chapter~~ section, unless the context requires a different meaning,

~~"Biodiesel"~~ "biodiesel" fuel means a renewable, biodegradable, mono-alkyl ester combustible liquid fluid fuel from agricultural plant oils or animal fats that meets the applicable American Society for Testing and Materials (ASTM) Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

~~§ 67-501. Use of biodiesel and other alternative fuels in vehicles providing public transportation.~~

B. The ~~Commonwealth Transportation~~ Board shall encourage the use of biodiesel fuel and other alternative fuels, to the extent practicable, in buses and other vehicles used to provide public transportation in the Commonwealth.

Drafting note: Existing §§ 67-500 and 67-501 are combined and technical changes are made.

~~Chapter 7.~~

~~Covenants Restricting Solar Energy Collection Devices.~~

TITLE 55.1. PROPERTY AND CONVEYANCES.

CHAPTER 18.

PROPERTY OWNERS' ASSOCIATION ACT.

Article 3.

Operation and Management of Association.

Drafting note: Existing Chapter 7 (§§ 67-700 and 67-701) of Title 67, concerning covenants restricting solar energy collection devices, applies to a property owners' association under the Property Owners' Association Act (§ 55.1-1800 et seq.), a unit owners' association under the Virginia Condominium Act (§ 55.1-1900 et seq.), and a proprietary lessees' association under the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.). Therefore, existing Chapter 7 of Title 67 is relocated to Chapters 18 (§ 55.1-1800 et seq.), 19 (§ 55.1-1900 et seq.), and 21 (§ 55.1-2100 et seq.) in Title 55.1.

~~§ 67-700~~ 55.1-1820.1. Definitions Installation of solar energy collection devices.

A. As used in this ~~chapter:~~ section, unless the context requires a different meaning.

~~"Community association" means an unincorporated association or corporation that owns or has under its care, custody, or control real estate subject to a recorded declaration of covenants that obligates a person, by virtue of ownership of specific real estate, to be a member of the unincorporated association or corporation.~~

~~"Solar "~~solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

~~§ 67-701. Covenants regarding solar power.~~

~~A. B.~~ No-community association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for ~~that community~~ the

association establishes such a prohibition. However ~~a community~~, an association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any ~~resale certificate pursuant to § 55.1-1990 and any~~ disclosure packet pursuant to § 55.1-1809, ~~as applicable~~, given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

~~B.~~ C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the ~~community~~ association to show that the restriction is not reasonable according to the criteria established in this subsection.

~~C.~~ D. The ~~community~~ association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the ~~community~~ association. ~~A community~~ An association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

Drafting note: Existing §§ 67-700 and 67-701 are combined and technical changes are made.

CHAPTER 19.

VIRGINIA CONDOMINIUM ACT.

Article 3.

Management of Condominium.

§ 55.1-1951.1. Installation of solar energy collection devices.

A. As used in this section, unless the context requires a different meaning, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No unit owners' association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the unit owners' association establishes such a prohibition. However, a unit owners' association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55.1-1990 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the unit owners' association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The unit owners' association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the unit owners' association. A unit owners' association may establish reasonable

[restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.](#)

Drafting note: Duplicates in Chapter 19 (§ 55.1-1900 et seq.) of Title 55.1 the text of proposed § 55.1-1820.1, which is located in Chapter 18 of Title 55.1 and is derived from existing §§ 67-700 and 67-701. To reflect the context of Chapter 19, the Virginia Condominium Act, references to "the association" are changed to "the unit owners' association" and the cross-reference in the final sentence of proposed subsection B is changed from "§ 55.1-1809" to "§ 55.1-1990."

CHAPTER 21.

VIRGINIA REAL ESTATE COOPERATIVE ACT.

Article 3.

Management of Cooperatives.

[§ 55.1-2133.1. Installation of solar energy collection devices.](#)

[A. As used in this section, unless the context requires a different meaning, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.](#)

[B. No association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the association establishes such a prohibition. However, an association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55.1-2161 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.](#)

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the association. An association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

Drafting note: Duplicates in Chapter 21 (§ 55.1-2100 et seq.) of Title 55.1 the text of proposed § 55.1-1820.1, which is located in Chapter 18 of Title 55.1 and is derived from existing §§ 67-700 and 67-701. To reflect the context of Chapter 21, the Virginia Real Estate Cooperative Act, the cross-reference in the final sentence of proposed subsection B is changed from "§ 55.1-1809" to "§ 55.1-2161."

CHAPTER 9.

~~RENEWABLE ELECTRICITY PRODUCTION GRANT PROGRAM.~~

Drafting note: Part of the recodification process is the identification and evaluation of programs and funds that have not been funded in the last five years. From the Code Title Recodification FAQs on the Code Commission home page: "This review includes an evaluation of the continued need for or repeal of any section that has not been implemented during the previous five years because sufficient funds were not appropriated by the General Assembly." Pursuant to Chapter 939 of the Acts of Assembly of 2006, as amended

by Chapter 789 of the Acts of Assembly of 2007, the effective date of this chapter is dependent on appropriation funding. No funding has been appropriated since this requirement was established more than 13 years ago; therefore, the Renewable Electricity Production Grant Program (§ 67-900 et seq.) is proposed for repeal.

~~§ 67-900. (Contingent effective date — see Editor's note) Definitions.~~

~~As used in this chapter, unless the context clearly requires otherwise:~~

~~"Corporation" means an entity subject to the tax imposed by Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1.~~

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

~~"Fund" means the Renewable Electricity Production Grant Fund established pursuant to § 67-902.~~

~~"Qualified energy resources" means solar, wind, closed-loop biomass, organic, livestock, and poultry waste resources and lignin and other organic by-products of kraft pulping processes, bark, chip rejects, sawdust, fines and other wood waste, regardless of the point of origin.~~

~~"Qualified Virginia facility" means a facility located in the Commonwealth that uses qualified energy resources to produce electricity, and that is originally placed in service on or after January 1, 2007.~~

Drafting note: This section is recommended for repeal as obsolete.

~~§ 67-901. (Contingent effective date — see Editor's note) Eligibility for grants for production of qualified energy resources.~~

~~Subject to appropriation of sufficient moneys in the Fund, an eligible corporation may receive a grant payable from the Fund for certain kilowatt hours of electricity produced after December 31, 2006. The grant amount shall be \$.0085 for each kilowatt hour of electricity (i) produced by the corporation from qualified energy resources at a qualified Virginia facility and (ii) sold and transmitted into the electric grid, or used in production by a qualified Virginia facility,~~

~~in a calendar year. Grant amounts shall be based on each such kilowatt hour of electricity sold or used in production by a qualified Virginia facility beginning with calendar year 2007.~~

Drafting note: This section is recommended for repeal as obsolete.

~~§ 67-902. (Contingent effective date—see Editor's note) Renewable Electricity Production Grant Fund.~~

~~A. There is hereby established in the state treasury a special nonreverting fund to be known as the Renewable Electricity Production Grant Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it. The Fund shall be used solely for the payment of the grants provided under this chapter. The Department shall administer the Fund.~~

~~B. The Department shall allocate moneys from the Fund in the following order of priority: (i) first to unpaid grant amounts carried forward from prior years because eligible corporations did not receive the full amount of any grant to which they were eligible in a prior year pursuant to this chapter and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible, the moneys in the Fund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the Fund available for allocation to such class.~~

~~C. The Department shall not allocate an amount in excess of the moneys available in the Fund for the payment of grants.~~

~~D. Beginning in calendar year 2007, by June 30 of each year, the Department shall (i) determine the amount of the grants to be allocated to eligible corporations and (ii) certify to the Comptroller and each eligible corporation the amount of the grant allocated to such corporation.~~

~~Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within 60 days of such certification, subject to appropriation of sufficient moneys in the Fund.~~

~~E. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any year pursuant to this chapter, such corporation shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the Department to the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.~~

~~F. In no case shall the Department certify grants from the Fund for kilowatts of electricity produced prior to January 1, 2007.~~

~~G. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.~~

Drafting note: This section is recommended for repeal as obsolete.

~~§ 67-903. (Contingent effective date — see Editor's note) Requirements for grants generally.~~

~~A. The Department shall establish an application process by which eligible corporations shall apply for a grant under this chapter. An application for a grant under this chapter shall not be approved until the Department has verified that the electricity has been produced from qualified energy resources at a qualified Virginia facility and that sufficient moneys are available in the Fund.~~

~~B. The application shall be filed with the director of the Department no later than March 31 each year following the calendar year in which such kilowatt hours of electricity were sold or used in production by a qualified Virginia facility. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant for such kilowatt hours of electricity sold or so used in the prior calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.~~

~~C. The application shall provide evidence, satisfactory to the Department, of the number of kilowatt hours of electricity produced by the corporation from qualified energy resources at a qualified Virginia facility that were sold, or used in production by a qualified Virginia facility, by such corporation in the prior calendar year.~~

~~D. As a condition of receipt of a grant, an eligible corporation shall make available to the Department for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied. All such documents appropriately identified by the eligible corporation shall be considered confidential and proprietary.~~

~~E. A corporation receiving a grant for the production and sale of kilowatt hours of electricity under this chapter may not use the production or sale of such kilowatt hours of electricity as the basis for claiming any other grant or credit against taxes, as provided under the Code of Virginia or in an appropriation act.~~

Drafting note: This section is recommended for repeal as obsolete.

~~CHAPTER 10:~~

~~SOLAR AND WIND ENERGY SYSTEM ACQUISITION GRANT PROGRAM.~~

Drafting note: Part of the recodification process is the identification and evaluation of programs and funds that have not been funded in the last five years. From the Code Title Recodification FAQs on the Code Commission home page: "This review includes an evaluation of the continued need for or repeal of any section that has not been implemented during the previous five years because sufficient funds were not appropriated by the General Assembly." Pursuant to Chapter 939 of the Acts of Assembly of 2006, as amended by Chapter 789 of the Acts of Assembly of 2007, the effective date of this chapter is dependent on appropriation funding. No funding has been appropriated since this requirement was established more than 13 years ago; therefore, the Solar and Wind Energy System Acquisition Grant Program (§ 67-1000 et seq.) is proposed for repeal.

~~§ 67-1000. (Contingent effective date — see Editor's note) Definitions.~~

~~As used in this chapter, unless the context clearly requires otherwise:~~

~~"Corporation" means an entity subject to the tax imposed by Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1.~~

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

~~"Fund" means the Solar and Wind Energy System Acquisition Grant Fund established pursuant to § 67-1002.~~

~~"Individual" means the same as that term is defined in § 58.1-302.~~

~~"Photovoltaic property" means property that uses a solar photovoltaic process to generate electricity and that meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.~~

~~"Solar water heating property" means property that, when installed in connection with a structure, uses solar energy for the purpose of providing hot water for use within the structure and meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.~~

~~"Wind-powered electrical generator" means an electrical generating unit that (i) has a capacity of not more than 10 kilowatts, (ii) uses wind as its total source of fuel, (iii) is located on the individual's or corporation's premises, (iv) is intended primarily to offset all or part of the individual's or corporation's own electricity requirements, and (v) meets applicable performance and quality standards as specified by the Department.~~

Drafting note: This section is recommended for repeal as obsolete.

~~§ 67-1001. (Contingent effective date — see Editor's note) Eligibility for grants for installation of photovoltaic property, solar water heating property, and wind-powered electrical generators.~~

~~A. Subject to appropriation of sufficient moneys in the Fund, beginning with calendar year 2007, an eligible individual or corporation may receive a grant payable from the Fund for a portion~~

~~of the cost of photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service during the calendar year by such individual or corporation. The grant amount shall be 15% of the total installed cost of photovoltaic property, solar water heating property, or wind-powered electrical generators but shall not exceed an aggregate total of:~~

~~1. \$2,000 for each system of photovoltaic property;~~

~~2. \$1,000 for each system of solar water heating property; and~~

~~3. \$1,000 for each system of wind-powered electrical generators.~~

~~B. Persons or entities placing in service photovoltaic property, solar water heating property, or wind-powered electrical generators for or on behalf of another person or entity shall not be eligible to receive a grant for such property.~~

Drafting note: This section is recommended for repeal as obsolete.

~~§ 67-1002. (Contingent effective date — see Editor's note) Solar and Wind Energy System Acquisition Grant Fund.~~

~~A. There is hereby established in the state treasury a special nonreverting fund to be known as the Solar and Wind Energy System Acquisition Grant Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it. The Fund shall be used solely for the payment of the grants provided under this chapter. The Department shall administer the Fund.~~

~~B. The Department shall allocate moneys from the Fund to applicants in the order in which their applications are received, until all funds allocated for that fiscal year are expended.~~

~~C. The Department shall not allocate an amount in excess of the moneys available in the Fund for the payment of grants.~~

~~D. Beginning in calendar year 2007, by June 30 of each year, the Department shall (i) determine the amount of the grants to be allocated to eligible individuals and corporations, and (ii) certify to the Comptroller and each eligible grant applicant the amount of the grant allocated to such applicant. Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within 60 days of such certification.~~

~~E. In no case shall the Department certify grants from the Fund for photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service prior to January 1, 2007.~~

~~F. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.~~

Drafting note: This section is recommended for repeal as obsolete.

~~§ 67-1003. (Contingent effective date — see Editor's note) Requirements for grants generally.~~

~~A. The Department shall establish an application process by which eligible individuals and corporations shall apply for a grant under this chapter, as follows:~~

~~1. Eligible individuals and corporations may submit an application before the equipment is installed. In this case, the Department, within 14 days of receiving the application, shall notify the applicant as to whether sufficient moneys remain in the Fund to satisfy a potential grant award to the applicant. The Department shall reserve such funds for the applicant for the calendar year in which the applicant applies.~~

~~2. The application shall be filed with the director of the Department no later than March 31 of the year following the calendar year in which such property was placed in service. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant for photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service in~~

~~the prior calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.~~

~~B. In order to receive payment of grant funds, the applicant shall provide evidence, satisfactory to the Department, of the total installed cost of each system of photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service by such individual or corporation in the prior calendar year.~~

~~C. As a condition of receipt of a grant, an eligible individual or corporation shall make available to the Department for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied.~~

~~D. An individual or corporation receiving a grant pursuant to this chapter for a system of photovoltaic property, solar water heating property, or wind-powered electrical generators may not use such system as the basis for claiming any other grant or credit against taxes, as provided under the Code of Virginia or in an appropriation act.~~

Drafting note: This section is recommended for repeal as obsolete.

TITLE 56. PUBLIC SERVICE COMPANIES.

CHAPTER ~~11~~ 29.

RENEWABLE ENERGY CO-LOCATION OF DISTRIBUTION FACILITIES.

Drafting note: Existing Chapter 11 (§ 67-1100 et seq.) of Title 67, concerning renewable energy co-location of distribution facilities, is relocated as proposed Chapter 29 (§ 56-614 et seq.) of Title 56.

~~§ 67-1100~~ 56-614. Definitions.

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

~~"Commission" means the State Corporation Commission.~~

"Distribution facilities" includes poles and wires, or cables, or pipelines or other underground conduits by which a renewable generator is able to (i) supply electricity generated

at its renewable energy facility to the electric distribution grid, (ii) distribute steam generated at its renewable energy facility to customers, or (iii) supply landfill gas it collects to customers or a natural gas distribution or transmission pipeline.

"Locality" ~~has the meaning ascribed thereto~~ means the same as that term is defined in § 15.2-102.

"Public highway" means, for purposes of computing the public rights-of-way use fee, the centerline mileage of highways and streets that are part of the primary state highway system as defined in § 33.2-100, the secondary state highway system as defined in §§ 33.2-100 and 33.2-324, the highways of those cities and certain towns defined in § 33.2-319, and the highways and streets maintained and operated by counties that have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that have not elected to return.

"Public rights-of-way use fee" means the fee chargeable to a renewable generator for the occupation and use of public streets, roads, highways, works, turnpikes, streets, avenues, and alleys in the Commonwealth by a locality or the Commonwealth Transportation Board for a renewable generator for its distribution facilities.

"Renewable energy facility" means (i) an electrical generation facility that produces not more than 2 megawatts peak net power output to the distribution grid, which electricity is generated only from a renewable energy source; (ii) a steam reduction facility with a rated capacity of not more than 5,000 mmBtus per hour that produces steam only from a renewable energy source; or (iii) a solid waste management facility permitted by the Department of Environmental Quality from which landfill gas is transmitted or distributed off premises.

"Renewable energy source" means energy derived from any source specified in the definition of renewable energy in § 56-576.

"Renewable generator" means a person that (i) does not have the power of a public service corporation to acquire rights-of-way, easements, or other interests in lands as provided in § 56-49 and (ii) operates a renewable energy facility.

"Restrictions or requirements concerning the use of the public rights-of-way" includes permitting processes; requirements regarding notice, time, and location of excavations and repair work; enforcement of the statewide building code; and inspections. ~~Such phrase shall~~ but does not include any existing franchise fee or public rights-of-way use fee.

Drafting note: The definition of "Commission" is deleted as unnecessary because the term is currently defined for Title 56 in § 56-1. Technical changes are made and language is updated for modern usage.

~~§ 67-1101~~ 56-615. Right to occupy rights-of-way; location of ~~same~~ rights-of-way.

A. Every renewable generator shall have authority to occupy and use the public roads, works, turnpikes, streets, avenues, and alleys in any county, with the consent of the board of supervisors or other governing authority thereof, or in any incorporated city or town, with the consent of the council thereof, and the waterways within the Commonwealth, with the consent of the Marine Resources Commission, for the erection of distribution facilities. However, if the road or street is in the primary state highway system or the secondary state highway system, the consent of the board of supervisors or other governing authority of any county shall not be necessary, provided that a permit for such occupation and use is first obtained from the Department of Transportation. The use of any road or street in the primary state highway system or secondary state highway system that has been designated a limited access highway in accordance with § 33.2-401 shall not be permitted, unless the Department of Transportation approves an exception in accordance with the ~~then-current~~ then-current policy.

B. ~~No~~ Neither a locality ~~or~~ nor the Department of Transportation shall impose any fees on a renewable generator for the use of public rights-of-way except in the manner prescribed in ~~§ 67-1103~~ 56-617.

C. ~~No~~ Neither a locality ~~or~~ nor the Department of Transportation shall impose on renewable generators, whether by franchise, ordinance, or other means, any restrictions or requirements concerning the use of the public rights-of-way that are (i) unfair or unreasonable or (ii) any greater than those imposed on providers of electric or natural gas utility service.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the Department of Transportation of a renewable generator to use the public rights-of-way shall be granted or denied within 45 days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. ~~No~~ Neither a locality receiving directly or indirectly a public rights-of-way use fee ~~or~~ nor the Department of Transportation shall require a renewable generator to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the public rights-of-way use fee.

F. This chapter shall not affect the obligation of the Department of Transportation to give notice, pursuant to § 33.2-272, to localities when it grants its permission for the construction, installation, location, or placement of a landfill gas pipeline within any highway right-of-way.

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

§ ~~67-1102~~ 56-616. Occupation of property of certain localities; imposition of terms and conditions as to use of property.

A. Any incorporated city or town may impose upon a renewable generator any terms and conditions consistent herewith and supplemental hereto, as to the occupation and use of its streets, avenues, and alleys, and as to the construction and maintenance of the distribution facilities of the renewable generator along, over, or under the same, that the city or town may deem expedient and proper.

B. No locality shall impose any fees on a renewable generator for the use of public rights-of-way except in the manner prescribed in § ~~67-1103~~ [56-617](#).

C. No locality shall impose on a renewable generator, whether by franchise, ordinance, or other means, any restrictions or requirements concerning the use of the public rights-of-way that are (i) unfair or unreasonable or (ii) any greater than those imposed on providers of electric or natural gas utility service.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way of a renewable generator to use the public rights-of-way shall be granted or denied within 45 days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. No locality receiving directly or indirectly a public rights-of-way use fee shall require a renewable generator to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the public rights-of-way use fee.

F. A renewable generator shall have the same rights, duties, and responsibilities related to the crossing of a railroad as afforded other public service corporations in §§ 56-12, 56-17, ~~56-18, 56-19, 56-20, 56-21~~, [through](#) 56-22, 56-25, 56-26, and 56-27. Nothing in this chapter shall expand the rights of renewable generators to either cross or otherwise have access to railroad property to an extent greater than that afforded other public service corporations in ~~Title 56~~ [this title](#).

Drafting note: Technical changes.

§ ~~67-1103~~ [56-617](#). Public rights-of-way use fee.

A. Notwithstanding any other provisions of law, there is hereby established a public rights-of-way use fee to be charged in lieu of any and all fees of general application, except for zoning, subdivision, site plan, and comprehensive plan fees of general application, otherwise chargeable to a renewable generator by the Department of Transportation or a locality in connection with a permit for such occupation and use granted in accordance with § ~~67-1101~~ [56-615](#) or ~~67-1102~~ [56-](#)

616. The public rights-of-way use fee established by this section is imposed on all renewable generators that occupy and use public rights-of-way in order to (i) supply electricity generated at its renewable energy facility to the electric distribution grid, (ii) distribute steam generated at its renewable energy facility to customers, or (iii) supply landfill gas to customers or to a natural gas distribution or transmission pipeline.

B. The amount of the public rights-of-way use fee for a renewable generator shall be \$1,500 per mile or any portion thereof over which the renewable generator has installed distribution facilities.

C. A renewable generator shall remit its required public rights-of-way use fee to the locality or the Department of Transportation, as applicable, prior to initiation of construction, as follows:

1. The renewable generator shall remit directly to the applicable locality all public rights-of-way use fees billed in (i) cities; (ii) towns whose public streets and roads are not maintained by the Department of Transportation; and (iii) any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that has elected not to return.

2. The public rights-of-way use fees in all other counties shall be remitted by each renewable generator to the Department of Transportation, and shall first be used to offset the administrative costs of processing the permit with the remaining fee being added to the secondary system construction improvement program funds of the counties where the facilities are located.

Drafting note: Technical changes.

~~§ 67-1104~~ 56-618. Reimbursement for relocation costs.

A. Renewable generators shall be reimbursed 100 percent of the eligible cost of relocating distribution facilities installed in the public rights-of-way, for the first three years after the completion of the installation, that are incurred at the direction of a locality that imposes by ordinance the public rights-of-way use fee or the Department of Transportation in any public

rights-of-way in accordance with §§ 56-458 and 56-462. For the fourth through sixth year after the completion of the installation, the renewable generator shall be reimbursed 50 percent of the eligible cost for the relocation of facilities installed in the public rights-of-way. Beginning in the seventh year, the renewable generators shall be responsible for the cost of relocating facilities installed in the public rights-of-way. Such reimbursement shall be received from either (i) the locality that granted the permit or franchise to use such right-of-way or (ii) the Commonwealth Transportation Board if the road or street is in the primary state highway system or the secondary state highway system.

B. The amount of relocation reimbursement in any fiscal year to be reimbursed under this section shall not exceed the amount of public rights-of-way use fees received by that locality or the Department of Transportation from the renewable generator required to relocate its distribution facilities.

Drafting note: No change.

§ ~~67-1105~~ 56-619. Relocation of lines or works of renewable generator acquired by Commonwealth Transportation Board.

Whenever a renewable generator is required by the Commonwealth Transportation Board or the Commissioner of Highways to remove any part of its distribution facilities off of the right-of-way of a road now or hereafter included in the primary or secondary state highway system, or if any right-of-way, property, or interest therein used and occupied by the renewable generator with its lines or works, or part thereof, is acquired by the Commonwealth Transportation Board or the Commissioner of Highways for the uses of the primary or secondary state highway system, or if the renewable generator is notified by such Board or Commissioner of the desire of such Board or Commissioner to acquire such right-of-way, property, or interest therein, used and occupied by such company with its lines or works, or part thereof, for the uses of the primary or secondary state highway system, the renewable generator shall relocate its lines or works, or the part or parts thereof affected.

Drafting note: No change.

§ ~~67-1106~~ 56-620. How consent of appropriate authorities obtained; terms of use.

The consent required under § ~~67-1101~~ 56-615, when given, shall be by ordinance regularly adopted by the council or other governing body of the city or town; or by resolution regularly adopted and spread upon the minutes by the board of supervisors or other governing authority of the county in which such line is to be located, or, if such permission is to be given by the Commissioner of Highways or his designee, through the issuance of a land use permit. Such use of the public roads, turnpikes, streets, avenues, and alleys in any of the cities or towns or counties of the Commonwealth shall be subject to such terms, regulations, and restrictions as may be imposed by the corporate authorities of any such city or town, or the board of supervisors or other governing authority of any such county, except that if the road or street is in the primary or secondary state highway system, as now or hereafter established, any occupation and use thereof under the provisions of this chapter, whether by consent heretofore or hereafter obtained, shall be subject to such terms, regulations, and restrictions as may be imposed by the Commonwealth Transportation Board not in conflict in incorporated cities and towns with any vested contractual rights of such company with such city or town.

Drafting note: Technical changes.

§ ~~67-1107~~ 56-621. Cost to Commonwealth in connection with inspection and coordination of construction of line to be paid by renewable generator.

The actual costs and expenses of the Commonwealth for the inspection or coordination of the construction or installation of any of the distribution facilities of the renewable generator, under the provisions of this chapter, under any permit of the Commonwealth Transportation Board shall be borne by the renewable generator. The sum of the payment required by this section shall be paid to the Department of Transportation within 30 days from the receipt of a progress or final bill from the Department of Transportation.

Drafting note: No change.

591 § ~~67-1108~~ 56-622. Renewable generator may contract for right-of-way.

592 A renewable generator may contract with any person that owns lands, or any interest,
593 franchise, privilege, or easement therein or in respect thereto, over which distribution facilities
594 are proposed to be constructed, for the right-of-way for erecting, repairing, and preserving its
595 poles and other structures necessary for operating its facilities, and for sufficient land for the
596 erection and occupation of offices at suitable distances along its distribution facilities.

597 **Drafting note: No change.**

598 § ~~67-1109~~ 56-623. Construction of transmission facilities.

599 All posts, poles, wires, cables, lines, pipelines, conduits, and other distribution facilities
600 ~~that shall be~~ erected under any authority conferred by this chapter shall be so located as in no way
601 to obstruct or interfere with public travel or the ordinary use of, or the safety and convenience of
602 persons traveling through, on, or over, the public roads, turnpikes, streets, avenues, alleys,
603 railroads, or waters in or upon which the same may be erected. All distribution facilities erected
604 as aforesaid shall be placed at such height as provided by regulations of the ~~State Corporation~~
605 Commission or the Commonwealth Transportation Board ~~by regulation shall provide~~. Buried
606 distribution facilities shall be laid at such distance below the surface of any public road, turnpike,
607 street, avenue, or alley, and at such distance from the outside of any gas or water main or other
608 conduit already laid under such public road, turnpike, street, avenue, or alley, as ~~may be~~ prescribed
609 by regulations of the Commission or by the Commonwealth Transportation Board ~~by regulation~~.
610 No distribution facilities shall be strung across or laid, nor posts or poles erected, upon the
611 property of any person without first obtaining the consent of the owner thereof. Such distribution
612 facilities shall not damage private property without compensation therefor, nor in any way
613 obstruct the navigation of any stream, or impair or endanger the use thereof by the public or any
614 other person entitled to the use of the same. In consideration of co-locating on existing rights of
615 way, the renewable generator shall meet the respective safety and clearance standards of the public
616 service corporation including ~~but not limited to~~ the National Electrical Safety Code, the

Underground Utility Damage Prevention Act (§ 56-265.14 et seq.), gas pipeline safety standards pursuant to § 56-257.2, and the public service corporation's own safety and clearance standards as the same are communicated to the renewable generator in writing, and any applicable federal laws and regulations.

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

~~§ 67-1110~~ [56-624](#). Restoring condition of ground.

The portions of the surface of the roads, turnpikes, streets, avenues, or alleys, or of any pavements opened up or disturbed in erecting, repairing, laying, or replacing distribution facilities under the provisions of this chapter shall be immediately restored to and maintained in good condition by the renewable generator doing such work. In case of the failure of the renewable generator to restore and maintain the same, the corporate authorities of the city or town, or the board of supervisors or other governing authority of the county, or the Commissioner of Highways, as the case may be, may properly restore and maintain the same, and the costs thereof may be recovered by the city or town, or county, or Commonwealth, from the renewable generator, in any court of proper jurisdiction.

Drafting note: Technical change.

~~Chapter 13.~~

~~Voluntary Solar Resource Development Fund.~~

~~§§ 67-1300 through 67-1305. Expired.~~

Drafting note: Expired July 1, 2016, pursuant to Acts 2011, cc. 806 and 839, cl. 2.

#

Item 4 - Amendment to July 7, 2020 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.

Other business: Mr. Wade stated that during the 2020 Session of the General Assembly, the House and the Senate changed the names of several standing committees. In the Senate, the changes are Committee on Finance to Committee on Finance and Appropriations and Committee for Courts of Justice to Committee on Judiciary. In the House, the changes are (i) Committee on Commerce and Labor to the Committee on Labor and Commerce; (ii) Committee on Militia, Police, and Public Safety to Committee on Public Safety; and (iii) Committee on Technology and Science to Committee on Communications, Technology, and Innovation. Under § 30-149 of the Code of Virginia, the Commission has the authority to change the committee names throughout the Code. On motion of Delegate Simon, seconded by Delegate Scott, the Commission unanimously approved exercising its authority to update the committee names.

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.