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HOUSE BILL NO. 1183

Offered January 22, 1996

A BILL to amend and reenact §§ 2.1-1.1, 2.1-1.3, 2.1-51.40, 2.1-512.1, 9-145.1, 10.1-571, 10.1-659, 10.1-1194, 23-135.7:7, 28.2-1208, 33.1-222, 45.1-161.1, 45.1-161.2, 45.1-161.5, 45.1-161.179, 45.1-361.41, 56-265.15:1, 58.1-439.2, 58.1-609.3, 58.1-3660, 62.1-195.1, 62.1-243, 62.1-256, and 62.1-259 of the Code of Virginia; and to amend the Code of Virginia by adding in Chapter 32 of Title 2.1 an article numbered 5.4, consisting of sections numbered 2.1-526.23 and 2.1-526.24, and a section numbered 45.1-161.6:1; and to repeal Chapter 26 of Title 45.1 of the Code of Virginia, consisting of sections numbered 45.1-390, 45.1-391, and 45.1-392, relating to the transfer of the Division of Energy from the Department of Mines, Minerals and Energy to the Department of General Services.

Patrons—McClure, Barlow and Phillips

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-1.1, 2.1-1.3, 2.1-51.40, 2.1-512.1, 9-145.1, 10.1-571, 10.1-659, 10.1-1194, 23-135.7:7, 28.2-1208, 33.1-222, 45.1-161.1, 45.1-161.2, 45.1-161.5, 45.1-161.179, 45.1-361.41, 56-265.15:1, 58.1-439.2, 58.1-609.3, 58.1-3660, 62.1-195.1, 62.1-243, 62.1-256, and 62.1-259 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 32 of Title 2.1 an article numbered 5.4, consisting of sections numbered 2.1-526.23 and 2.1-526.24, and a section numbered 45.1-161.6:1 as follows:

§ 2.1-1.1. Departments generally.

There shall be, in addition to such others as may be established by law, the following administrative departments and divisions of the state government:

Chesapeake Bay Local Assistance Department.
Department of Accounts.
Department for the Aging.
Department of Agriculture and Consumer Services.
Department of Alcoholic Beverage Control.
Department of Aviation.
Department of Conservation and Recreation.
Department of Corporations.
Department of Correctional Education.
Department of Corrections.
Department of Criminal Justice Services.
Department for the Deaf and Hard-of-Hearing.
Department of Economic Development.
Department of Education.
Department of Emergency Services.
Department of Employee Relations Counselors.
Department of Environmental Quality.
Department of Fire Programs.
Department of Forestry.
Department of Game and Inland Fisheries.
Department of General Services.
Department of Health.
Department of Health Professions.
Department of Historic Resources.
Department of Housing and Community Development.
Department of Information Technology.
Department of Labor and Industry.
Department of Law.
Department of Medical Assistance Services.
Department of Mental Health, Mental Retardation and Substance Abuse Services.
Department of Military Affairs.
Department of Mines~~,~~ *and* Minerals ~~and Energy~~.
Department of Minority Business Enterprise.

Department of Motor Vehicles.
Department of Personnel and Training.
Department of Planning and Budget.
Department of Professional and Occupational Regulation.
Department of Rail and Public Transportation.
Department of Rehabilitative Services.
Department for Rights of Virginians With Disabilities.
Department of Social Services.
Department of State Police.
Department of Taxation.
Department of Transportation.
Department of the Treasury.
Department of Veterans' Affairs.
Department for the Visually Handicapped.
Department of Workers' Compensation.
Department of Youth and Family Services.
Governor's Employment and Training Department.

§ 2.1-1.3. Entities subject to standard nomenclature.

The following independent administrative entities are subject to the standard nomenclature provisions of § 2.1-1.2:

Chesapeake Bay Local Assistance Department.
Commonwealth Competition Council.
Department of Accounts.
Department for the Aging.
Department of Agriculture and Consumer Services.
Department of Alcoholic Beverage Control.
Department of Aviation.
Department of Conservation and Recreation.
Department of Correctional Education.
Department of Corrections.
Department of Criminal Justice Services.
Department for the Deaf and Hard-of-Hearing.
Department of Economic Development.
Department of Education.
Department of Emergency Services.
Department of Environmental Quality.
Department of Employee Relations Counselors.
Department of Fire Programs.
Department of Forestry.
Department of Game and Inland Fisheries.
Department of General Services.
Department of Health.
Department of Health Professions.
Department of Historic Resources.
Department of Housing and Community Development.
Department of Information Technology.
Department of Labor and Industry.
Department of Medical Assistance Services.
Department of Mental Health, Mental Retardation and Substance Abuse Services.
Department of Military Affairs.
Department of Mines~~,~~ *and* Minerals ~~and Energy~~.
Department of Minority Business Enterprise.
Department of Motor Vehicles.
Department of Personnel and Training.
Department of Planning and Budget.
Department of Professional and Occupational Regulation.
Department of Rail and Public Transportation.
Department of Rehabilitative Services.
Department for Rights of Virginians With Disabilities.
Department of Social Services.
Department of State Police.
Department of Taxation.

Department of Transportation.
Department of the Treasury.
Department of Veterans' Affairs.
Department for the Visually Handicapped.
Department of Youth and Family Services.
Governor's Employment and Training Department.

§ 2.1-51.40. Agencies for which Secretary of Commerce and Trade responsible.

The Secretary shall be responsible to the Governor for the following agencies: Department of Forestry, Department of Economic Development, Department of Labor and Industry, Department of Mines~~,~~ *and* Minerals ~~and Energy~~, Innovative Technology Authority, Virginia Employment Commission, Department of Professional and Occupational Regulation, Milk Commission, Department of Agriculture and Consumer Services, Department of Housing and Community Development, Department of Minority Business Enterprise, Virginia Agricultural Council, Virginia World Trade Council, Commission for the Arts, Virginia Port Authority and Virginia Marine Products Board.

The Governor, by executive order, may assign any state executive agency to the Secretary of Commerce and Trade, or reassign any agency listed in this section to another secretary.

§ 2.1-512.1. Exploration for and extraction of minerals on state-owned uplands.

A. Upon receiving the recommendation of both the Director of the Department of General Services and the Director of the Department of Mines~~,~~ *and* Minerals ~~and Energy~~, the Governor shall determine whether the proposed mineral exploration, leasing, or extraction of minerals on state-owned uplands is in the public interest. No state-owned uplands shall be approved for mineral exploration, leasing, or extraction without a public hearing in the locality where the affected land or the greater portion thereof is located and a competitive bid or proposal process as described in the Plan. The provisions of this section shall not apply to the extraction of minerals on state-owned uplands pursuant to an oil or gas pooling order unless the well through which the extraction will occur is situated on such land.

For the purposes of this section, "state-owned uplands" shall mean lands owned by the Commonwealth (i) which lie landward of the mean low water mark in tidal areas or (ii) which have an elevation above the average surface water level in nontidal areas.

B. The agencies, departments, or institutions proposing or receiving applications for mineral exploration, leasing or extraction on state-owned uplands shall, through their boards or commissions, recommend as specified in § 2.1-512 B all such activities to the Department of General Services, Division of Engineering and Buildings, following guidelines set forth in the State Minerals Management Plan. The Division of Engineering and Buildings and the Department of Mines~~,~~ *and* Minerals ~~and Energy~~ shall review and recommend to the Governor such proposed activities. Such agencies, departments or institutions, through their boards or commissions, may execute such leases or contracts which have been approved by the Governor.

C. The Department of Mines~~,~~ *and* Minerals ~~and Energy~~ , in cooperation with the Department of General Services, Division of Engineering and Buildings, shall develop, with the assistance of affected state agencies, departments, and institutions, a State Minerals Management Plan. The Plan shall include provisions for the holding of public hearings and the public advertising for competitive bids or proposals for mineral exploration, leasing, and extraction activities on state-owned uplands. Sales of mineral exploration permits and leases for these lands shall be administered by the Department of General Services, Division of Engineering and Buildings, with the advice of the Department of Mines~~,~~ *and* Minerals ~~and Energy~~.

D. The proceeds from all such sales or leases above the costs of such sale to the Department of Mines~~,~~ *and* Minerals ~~and Energy~~ or to the agency, department or institution sponsoring this sale shall be paid into the general fund of the state treasury, so long as the sales or leases pertain to general fund agencies or the property involved was originally acquired through the general fund. Net proceeds from sales or leases of special-fund agency properties or property acquired through a gift shall be retained by such agency or institution or used in accordance with the original terms of the gift if so stated.

E. Mining, leasing, and extraction activities in state-owned submerged lands shall be authorized and administered by the Virginia Marine Resources Commission pursuant to §§ 62.1-3 through 62.1-4.

Article 5.4.

Division of Energy.

§ 2.1-526.23. Division of Energy established; findings and policy; powers and duties. The General Assembly finds that because energy-related issues continue to 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 continued and transferred to the Department of General Services. The Division shall have the authority to coordinate

development and implementation of energy policy in Virginia.

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.

In addition, the Division is authorized to make and enter into 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.

The Division shall:

1. Consult with 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 communication with appropriate agencies of the federal government on the activities of the federal government related to energy production, consumption, transportation and energy resource management in general;

3. Provide services to encourage Virginia businesses, industries, utilities, academic institutions, state and local governments and private institutions to develop energy conservation programs and energy resources; and

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

§ 2.1-526.24. Solar Energy Center; purposes.

The Virginia Solar Energy Center is continued as a part of the Division of Energy. The purposes of the Center are to (i) serve as a clearinghouse to gather, maintain and disseminate general and technical information on solar energy and its utilization; (ii) coordinate programs for solar energy data-gathering in Virginia; (iii) coordinate efforts and programs on solar energy with other state agencies and institutions and other states and federal agencies; (iv) promote cooperation among Virginia business, industry, agriculture and the public related to the use of solar energy; (v) develop education programs on solar energy for use in schools and by the public; and (vi) provide assistance in formulating policies on the utilization of solar energy that would be in the best interest of the Commonwealth.

The intent of the General Assembly is to provide an organization for the purposes set out in this section that will receive nonstate funds for such purposes.

§ 9-145.1. Commission established; agency assistance; powers and duties.

The Virginia Coal and Energy Commission is hereby established as a permanent agency of the Commonwealth and is hereafter referred to in this chapter as "Commission." The Commission shall generally study all aspects of coal as an energy resource and endeavor to stimulate, encourage, promote, and assist in the development of renewable and alternative energy resources other than petroleum. The Commission shall have no authority to promulgate rules and regulations. All agencies of the Commonwealth shall assist the Commission in its work. In addition to the aforementioned general powers, the Commission shall also perform the following functions:

A. Act in an advisory capacity to the Governor and executive branch agencies upon energy related matters;

B. Investigate and consider such questions and problems relating to the field of coal and energy utilization and alternative energy sources as may be submitted;

C. Make recommendations to the Governor and General Assembly on its own initiative;

D. Consult with applicable state agencies on all matters regarding energy conservation, including the promotion and implementation of initiatives for the public-at-large to conserve energy;

E. Endeavor to encourage research designed to further new and more extensive use of the coal as well as alternative and renewable energy resources of the Commonwealth;

F. Effectively disseminate any such proposals to groups and organizations, both state and local, so as to stimulate local governing bodies and private business initiative in the field of energy related matters; and

G. Coordinate its efforts with those of the Virginia Solar Energy Center established pursuant to ~~§ 45.1-391~~ *§ 2.1-526.24* and the Virginia Center for Coal and Energy Research established pursuant to Article 2.01 (§ 23-135.7:1 et seq.) of Chapter 11 of Title 23;

H. Actively seek federal and other funds to be used to carry out its functions; *and*

I. Seek to establish alternative fuel capability within the Commonwealth.

§ 10.1-571. No limitation on authority of Water Control Board or Department of Mines~~,~~ *and* Minerals ~~and Energy~~.

The provisions of this article shall not limit the powers or duties presently exercised by the State Water Control Board under Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1, or the powers or duties of the Department of Mines~~,~~ *and* Minerals ~~and Energy~~ as they relate to strip mine reclamation under Chapters 16 (§ 45.1-180 et seq.) and 17 (§ 45.1-198 et seq.) of Title 45.1 or oil or gas exploration under the Virginia ~~Oil and Gas~~ *Gas and Oil* Act (§ ~~45.1-286~~ *45.1-361.1* et seq.).

§ 10.1-659. Flood protection programs; coordination.

The provisions of this chapter shall be coordinated with federal, state and local flood prevention and water quality programs to minimize loss of life, property damage and negative impacts on the environment. This program coordination shall include but not be limited to the following: flood prevention, flood plain management, small watershed protection, dam safety, soil conservation, stormwater management and erosion and sediment control programs of the Department of Conservation and Recreation; the construction activities of the Department of Transportation which result in hydrologic modification of rivers, streams and flood plains; the water quality and other water management programs of the State Water Control Board; forested watershed management programs of the Department of Forestry; the statewide building code and other land use control programs of the Department of Housing and Community Development; local planning assistance programs of the Council on the Environment; the habitat management programs of the Virginia Marine Resources Commission; the hazard mitigation planning and disaster response programs of the Department of Emergency Services; the fish habitat protection programs of the Department of Game and Inland Fisheries; the mineral extraction regulatory program of the Department of Mines~~,~~ *and* Minerals ~~and Energy~~; the flood plain restrictions of the Department of Waste Management; the Chesapeake Bay Preservation Area criteria and local government assistance programs of the Chesapeake Bay Local Assistance Board. The Department shall also coordinate and cooperate with localities in rendering assistance to such localities in their efforts to comply with the planning, subdivision of land and zoning provisions of Chapter 11 (§ 15.1-427 et seq.) of Title 15.1. The Department shall cooperate with other public and private agencies having flood plain management programs, and shall coordinate its responsibilities under this article and any other law. These activities shall constitute the Commonwealth's flood prevention and protection program.

§ 10.1-1194. Watershed Planning and Permitting Coordination Task Force created; membership; duties.

A. There is hereby created the Watershed Planning and Permitting Coordination Task Force and shall be referred to in this article as the Task Force. The Task Force shall be composed of the Directors, or their designees, of the Department of Environmental Quality, the Department of Conservation and Recreation, the Department of Forestry, the Department of Mines~~,~~ *and* Minerals ~~and Energy~~, the Chesapeake Bay Local Assistance Department and the Commissioner, or his designee, of the Department of Agriculture and Consumer Services.

B. The Task Force shall meet at least quarterly on such dates and times as the members determine. A majority of the Task Force shall constitute a quorum.

C. The Task Force shall undertake such measures and activities it deems necessary and appropriate to see that the functions of the agencies represented therein, and to the extent practicable of other agencies of the Commonwealth, and the efforts of state and local agencies and authorities in watershed planning and watershed permitting are coordinated and promoted.

§ 23-135.7:7. Advisory Committee continued as Advisory Board.

The Virginia Coal Research and Development Advisory Committee is continued and shall hereafter be known as the Virginia Coal Research and Development Advisory Board. The Advisory Board shall serve in an advisory capacity to the Executive Director of the Virginia Center for Coal and Energy Research.

1. The Advisory Board shall be authorized to advise on those matters set forth in § 23-135.7:2.

2. Representatives to the Advisory Board shall be appointed by the Board of Visitors of Virginia Polytechnic Institute and State University.

3. The Board of Visitors of Virginia Polytechnic Institute and State University shall also appoint such other individuals as they deem necessary to the work of the Advisory Board.

4. Representatives from the Department of Conservation and Historic Resources, the Department of Economic Development, the Department of Mines~~,~~ *and* Minerals ~~and Energy~~, the Department of Labor and Industry, the Virginia Port Authority, the institutions of higher education, excluding Virginia Polytechnic Institute and State University, and the Community College System shall serve as the Advisory Board.

§ 28.2-1208. Granting easements in or leasing the beds of certain waters.

A. The Marine Resources Commission may, with the approval of the Attorney General and the Governor, grant easements in or lease the beds of the waters of the Commonwealth outside of the Baylor Survey. Every easement or lease executed pursuant to this section shall be for a period not to exceed five years and shall specify the rent royalties and such other terms deemed expedient and proper. Such easements and leases may include the right to renew the same for an additional period not to exceed five years, and, in addition to any other rights, may authorize the grantees and lessees to prospect for and take from the bottoms covered thereby, oil, gas, and other specified minerals and mineral substances. However, no easement or lease shall in any way affect or interfere with the rights

vouchsafed to the people of the Commonwealth concerning fishing, fowling, and the catching and taking of oysters and other shellfish in and from the leased bottoms or the waters above.

B. All easements granted and leases made pursuant to this section shall be executed for, and in the name and on behalf of, the Commonwealth by the Attorney General and shall be countersigned by the Governor.

C. All rents or royalties collected from such easements or leases shall be paid into the state treasury to the credit of the Public Oyster Rocks Replenishment Fund.

D. Prior to December 1 of each year, the Commissioner and the Attorney General shall make reports to the General Assembly on all easements and leases executed pursuant to this section during the preceding twelve months.

E. The Commission shall, in cooperation with the Division of Mineral Resources of the Department of Mines~~,~~ *and* Minerals ~~and Energy~~ and with the assistance of affected state agencies, departments and institutions, maintain a State Subaqueous Minerals Management Plan which shall supplement the State Minerals Management Plan set forth in § 2.1-512.1. The State Subaqueous Minerals Management Plan shall include provisions for (i) the holding of public hearings, (ii) public advertising for competitive bids or proposals for mineral leasing and extraction activities, (iii) preparation of environmental impact reports to be reviewed by the appropriate agency of the Commonwealth, and (iv) review and approval of leases by the Attorney General and the Governor as required by subsection A. The environmental impact reports shall address, but not be limited to:

1. The environmental impact of the proposed activity;

2. Any adverse environmental effects which cannot be avoided if the proposed activity is undertaken;

3. Measures proposed to minimize the impact of the proposed activity;

4. Any alternative to the proposed activity; and

5. Any irreversible environmental changes which would be involved in the proposed activity.

For the purposes of subdivision 4 of this subsection, the report shall contain all alternatives considered and the reasons why the alternatives were rejected. If a report does not set forth alternatives, it shall state why alternatives were not considered.

§ 33.1-222. Maps or plats prepared at request and expense of local governing bodies and other groups; Department of Mines~~,~~ *and* Minerals ~~and Energy~~ to seek other existing sources.

The Commonwealth Transportation Commissioner is hereby authorized in his discretion to have prepared photogrammetric maps or plats of specific sites or areas at the request of the governing bodies of counties, cities and towns of this Commonwealth, local nonprofit industrial development agencies, planning district commissions, soil and water conservation districts, metropolitan planning organizations, public service authorities and local chambers of commerce. The request shall have been first reviewed by the Department of Mines~~,~~ *and* Minerals ~~and Energy~~ to determine whether suitable or alternate maps or plats are currently available, and the governing body, agency or chamber must agree to reimburse the Department of Transportation for the cost of producing the maps or plats.

§ 45.1-161.1. Definitions.

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

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

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

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

§ 45.1-161.2. Department continued; appointment of Director.

The Department of Mines~~,~~ *and* Minerals ~~and Energy~~ is continued as an agency within the Secretariat of Commerce and Trade. The Department shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at his pleasure for a term coincident with his own.

§ 45.1-161.5. Establishment of divisions; division heads.

The following divisions, through which the functions, powers, and duties of the Department may be discharged, are established in the Department: a Division of Mines, a Division of Mined Land Reclamation, a Division of Mineral Resources, a Division of Gas and Oil, *and* a Division of Mineral Mining~~, and a Division of Energy~~. The Director may establish other divisions as he deems necessary. Except as provided in § 45.1-161.15 with respect to the Chief of the Division of Mines, the Director shall appoint persons to direct the various functions and programs of the divisions, and may delegate to the head of any division any of the powers and duties conferred or imposed by law on the Director.

§ 45.1-161.6:1. Solar Photovoltaic Manufacturing Incentive Grant Program.

A. Any manufacturer who, from January 1, 1995, through December 31, 1999, sells solar photovoltaic panels it manufactured in Virginia shall be entitled to receive an annual solar photovoltaic manufacturing incentive grant in an amount of seventy-five cents per watt of the rated capacity of panels sold in a calendar year. The grants shall be paid from a fund entitled the Solar Photovoltaic Manufacturing Incentive Grant Fund ("the Fund").

B. In the event applications for grants exceed six million watts per calendar year, the grant payments will be apportioned among the eligible applicants, based upon the total wattage evidenced by such applicants and the total wattage eligible for grants specified in this section.

C. Any manufacturer entitled to apply for a grant pursuant to this section shall provide evidence, satisfactory to the Director, of manufacturing such panels in Virginia, the sale of such solar photovoltaic panels, and the wattage sold per year. The reports of manufacturing and sales shall be filed no later than March 31 following the calendar year in which the sales eligible for the grant were made. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant. The postmark cancellation shall govern the date of the filing determination unless the Director has approved an alternative means of filing.

D. The Director shall certify to the Comptroller the amount of grant a manufacturer of solar photovoltaic panels is eligible to receive in a given calendar year. Payments shall be paid by check issued by the Treasurer of Virginia on warrant of the Comptroller.

E. The Director, upon presenting appropriate credentials, may examine the records, books, invoices, bills of lading, storage and production facilities and other applicable documents to determine whether the manufacturing and sale of the photovoltaic panels meet the requirements for grants as set forth in this section.

§ 45.1-161.179. Posting of notice.

The operator, or his agent, shall display, in bold-faced type, on a sign placed at the mine office, bath house, and on a bulletin board at the mine site, the following notice:

NOTICE

IT IS UNLAWFUL FOR A MINER OR OTHER PERSON IN AN UNDERGROUND COAL MINE TO SMOKE OR CARRY OR POSSESS UNDERGROUND ANY SMOKER'S ARTICLES OR MATCHES, LIGHTERS, OR SIMILAR MATERIALS GENERALLY USED FOR IGNITING SMOKER'S ARTICLES. A VIOLATION IS PUNISHABLE AS A CLASS 6 FELONY. ANY PERSON ENTERING OR PRESENT IN THE UNDERGROUND AREA OF ANY COAL MINE IS SUBJECT TO A SEARCH OF HIS PERSON AND PROPERTY BY OFFICIALS OF THE DEPARTMENT OF MINES~~,~~ *AND* MINERALS ~~AND~~ ~~ENERGY~~ FOR SUCH PROHIBITED SMOKER MATERIALS AT ANY TIME WHILE UNDERGROUND.

§ 45.1-361.41. Interference by injection wells with ground water supply.

A. Any person who owns or operates an injection well in a manner that proximately causes the contamination or diminution of ground water used for a beneficial use by any person who resides within the lesser of (i) the area of review required by the United States Environmental Protection Agency for the permitting of that injection well, or (ii) a one-half mile radius of the well shall provide the person with a replacement water supply. A replacement water supply shall provide the person or persons with water of equivalent quality and quantity as was provided by ground water prior to the contamination or diminution of the water supply resulting from the operation of the injection well. A replacement water supply shall include the provision of necessary storage and service facilities. "Ground water" shall have the same meaning ascribed to it in § 62.1-255. "Beneficial use" shall have the same meaning ascribed to it in § 62.1-10.

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

§ 56-265.15:1. Exemptions; routine maintenance.

Nothing in this chapter shall apply to:

1. Any hand digging performed by an owner or occupant of a property.

2. The tilling of soil for agricultural purposes.

3. Any excavation done by a railroad when the excavation is made entirely on the land which the railroad owns and on which the railroad operates, provided there is no encroachment on any operator's rights-of-ways or easements.

4. An excavation or demolition during an emergency, as defined in § 56-265.15, provided all reasonable precaution has been taken to protect the underground utility lines.

In the case of the state highway systems or streets and roads maintained by political subdivisions, officials of the Department of Transportation or the political subdivision where the use of such highways, roads, streets or other public way is impaired by an unforeseen occurrence shall determine the necessity of repair beginning immediately after the occurrence.

5. Any excavation for routine pavement maintenance, including patch type paving or the milling of pavement surfaces, upon the paved traveled portion of any street, road, or highway of the Commonwealth provided that any such excavation does not exceed a depth of twelve inches (0.3 meter).

6. Any excavation for the purpose of mining pursuant to and in accordance with the requirements of a permit issued by the Department of Mines~~,~~ *and* Minerals ~~and~~ ~~Energy~~.

§ 58.1-439.2. Coalfield employment enhancement tax credit.

A. For tax years beginning on and after January 1, 1996, but before January 1, 2001, any person who has an economic interest in coal mined in the Commonwealth shall be allowed a credit against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth in accordance with the following:

1. For coal mined by underground methods, the credit amount shall be based on the seam thickness as follows:

Seam Thickness Credit per Ton

Under 33" $.60

33" and Above $.50

The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer. Copies of such certification shall be maintained by the person qualifying for the credit under this section for a period of three years after the credit is applied for and received and shall be available for inspection by the Department of Taxation. The Department of Mines~~,~~ *and* Minerals ~~and Energy~~ is hereby authorized to audit all information upon which the isopach mapping is based.

2. For coal mined by surface mining methods, a credit in the amount of twenty-five cents per ton for coal sold in 1996, and each year thereafter.

B. In addition to the credit allowed in subsection A, for tax years beginning on and after January 1, 1996, any person who is a producer of coalbed methane shall be allowed a credit in the amount of one cent per million BTUs of coalbed methane produced in the Commonwealth against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth on such person.

C. For purposes of this section, economic interest is the same as the economic ownership interest required by § 611 of the Internal Revenue Code which was in effect on December 31, 1977. A party who only receives an arm's length royalty shall not be considered as having an economic interest in coal mined in the Commonwealth.

D. If the credit exceeds the person's state tax liability for the tax year, the excess may be redeemable by the Tax Commissioner on behalf of the Commonwealth for ninety-five percent of the face value within ninety days after filing the return. If the Commonwealth does not redeem such excess amount, it shall be transferable by sale.

E. No person may utilize more than one of the credits on a given ton of coal described in subsection A. No person may claim a credit pursuant to this section for any ton of coal for which a credit has been claimed under § 58.1-433 or § 58.1-2626.1. Persons who qualify for the credit may not apply such credit to their tax returns prior to January 1, 1999, and only one year of credits shall be allowed annually beginning in 1999. No credit authorized by subsections A and B shall be taken by any taxpayer in 1999 unless general fund revenue in fiscal year 1997-98 exceeds the official estimate of general fund revenue by at least the cost of the credits authorized by subsections A and B as estimated by the Department of Taxation. In each following year no credit shall be taken by any taxpayer unless general fund revenue in the fiscal year ending the prior June 30 exceeds the official estimate of general fund revenue by at least the cost of the credits authorized by subsections A and B.

§ 58.1-609.3. Commercial and industrial exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Personal property purchased by a contractor which is used solely in another state or in a foreign country, which could be purchased by such contractor for such use free from sales tax in such other state or foreign country, and which is stored temporarily in Virginia pending shipment to such state or country.

2. (i) Industrial materials for future processing, manufacturing, refining, or conversion into articles of tangible personal property for resale where such industrial materials either enter into the production of or become a component part of the finished product; (ii) industrial materials that are coated upon or impregnated into the product at any stage of its being processed, manufactured, refined, or converted for resale; (iii) machinery or tools or repair parts therefor or replacements thereof, fuel, power, energy, or supplies, used directly in processing, manufacturing, refining, mining or converting products for sale or resale; (iv) materials, containers, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale; or (v) equipment, printing or supplies used directly to produce a publication described in subdivision 3 of § 58.1-609.6 whether it is ultimately sold at retail or for resale or distribution at no cost. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in processing, manufacturing, refining, mining or converting products for sale or resale. The provisions of this subsection do not apply to the drilling, extraction, refining, or processing of oil, gas, natural gas and coalbed methane gas.

3. Tangible personal property sold or leased to (i) a public service corporation subject to a state franchise or license tax upon gross receipts, (ii) a telecommunications company as defined in

§ 58.1-400.1 or (iii) a telephone company chartered in the Commonwealth which is exclusively a local mutual association and is not designated to accumulate profits for the benefit of, or to pay dividends to, the stockholders or members thereof, for use or consumption by such corporation, company, person or mutual association directly in the rendition of its public service; and tangible personal property sold or leased to a public service corporation engaged in business as a common carrier of property or passengers by motor vehicle or railway, for use or consumption by such common carrier directly in the rendition of its public service.

4. Ships or vessels, or repairs and alterations thereof, used or to be used exclusively or principally in interstate or foreign commerce; fuel and supplies for use or consumption aboard ships or vessels plying the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the United States or its territories or possessions, or in foreign commerce between ports in the Commonwealth and ports in foreign countries, when delivered directly to such ships or vessels; or tangible personal property used directly in the building, conversion or repair of the ships or vessels covered by this subdivision.

5. Tangible personal property purchased for use or consumption directly and exclusively in basic research or research and development in the experimental or laboratory sense.

6. Tangible personal property sold or leased to an airline operating in intrastate, interstate or foreign commerce as a common carrier providing scheduled air service on a continuing basis to one or more Virginia airports at least one day per week, for use or consumption by such airline directly in the rendition of its common carrier service.

7. Meals furnished by restaurants or food service operators to employees as a part of wages.

8. Tangible personal property including machinery and tools, repair parts or replacements thereof, and supplies and materials used directly in maintaining and preparing textile products for rental or leasing by an industrial processor engaged in the commercial leasing or renting of laundered textile products.

9. (i) Certified pollution control equipment and facilities as defined in § 58.1-3660; and (ii) Effective retroactive to July 1, 1994, and through June 30, 1996, certified pollution control equipment and facilities as defined in § 58.1-3660 and which, in accordance with such section, has been certified by the Department of Mines~~,~~ *and* Minerals ~~and Energy~~ for coal, oil and gas production, including gas, natural gas, and coalbed methane gas.

10. Parts, tires, meters and dispatch radios sold or leased to taxicab operators for use or consumption directly in the rendition of their services.

11. High speed electrostatic duplicators or any other duplicators which have a printing capacity of 4,000 impressions or more per hour purchased or leased by persons engaged primarily in the printing or photocopying of products for sale or resale.

12. From July 1, 1994, through June 30, 1996, raw materials, fuel, power, energy, supplies, machinery or tools or repair parts therefor or replacements thereof, used directly in the drilling, extraction, refining, or processing of natural gas or oil and the reclamation of the well area. For the purposes of this section, the term "natural gas" shall mean "gas," "natural gas," and "coalbed methane gas" as defined in § 45.1-361.1. For the purposes of this section, "drilling," "extraction," "refining," and "processing" shall include production, inspection, testing, dewatering, dehydration, or distillation of raw natural gas into a usable condition consistent with commercial practices, and the gathering and transportation of raw natural gas to a facility wherein the gas is converted into such a usable condition. Machinery, tools and equipment, or repair parts therefor or replacements thereof, shall be exempt if the preponderance of their use is directly in the drilling, extraction, refining, or processing of natural gas or oil for sale or resale, or in well area reclamation activities required by state or federal law.

§ 58.1-3660. Certified pollution control equipment and facilities.

A. Certified pollution control equipment and facilities, as defined herein, are hereby declared to be a separate class of property and shall constitute a classification for local taxation separate from other such classification of real or personal property and such property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation.

B. As used in this section:

"Certified pollution control equipment and facilities" shall mean any property, including real or personal property, equipment, facilities, or devices, used primarily for the purpose of abating or preventing pollution of the atmosphere or waters of the Commonwealth and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of water or atmospheric pollution or contamination.

"State certifying authority" shall mean the State Water Control Board, for water pollution; the State Air Pollution Control Board, for air pollution; the Department of Mines~~,~~ *and* Minerals ~~and Energy~~, for coal, oil, and gas production, including gas, natural gas, and coalbed methane gas; and the Virginia

Waste Management Board, for waste disposal facilities, and shall include any interstate agency authorized to act in place of a certifying authority of the Commonwealth.

§ 62.1-195.1. Chesapeake Bay; drilling for oil or gas prohibited.

A. Notwithstanding any other law, a person shall not drill for oil or gas in the waters of the Chesapeake Bay or any of its tributaries. In Tidewater Virginia, as defined in § 10.1-2101, a person shall not drill for oil or gas in, whichever is the greater distance, as measured landward of the shoreline:

1. Those Chesapeake Bay Preservation Areas, as defined in § 10.1-2101, which a local government designates as "Resource Protection Areas" and incorporates into its local comprehensive plan. "Resource Protection Areas" shall be defined according to the criteria developed by the Chesapeake Bay Local Assistance Board pursuant to § 10.1-2107; or

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

B. In the event that any person desires to drill for oil or gas in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A of this section, he shall submit to the Department of Mines~~,~~ *and* Minerals ~~and Energy~~ as part of his application for permit to drill an environmental impact assessment. The environmental impact assessment shall include:

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

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

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

c. Air and water quality; and

d. Land and water resources;

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

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

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

1. Publish in the Virginia Register of Regulations a notice sufficient to identify the environmental impact assessment and providing an opportunity for public review of and comment on the assessment. The period for public review and comment shall not be less than thirty days from the date of publication;

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

3. Based upon the review by all appropriate state agencies and the public comments received, submit findings and recommendations to the Department of Mines~~,~~ *and* Minerals ~~and Energy~~, within ninety days after notification and receipt of the environmental impact assessment from the Department.

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

E. The Department of Environmental Quality shall, in conjunction with other state agencies and in conformance with the Administrative Process Act (§ 9-6.14:1 et seq.), develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments required by this section.

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

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

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

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

4. The drilling site is stabilized with boards or gravel or other materials which will result in minimal amounts of runoff;

5. Persons certified in blowout prevention are present at all times during drilling;

6. Conductor pipe is set as necessary from the surface;

7. Casing is set and pressure grouted from the surface to a point at least 2500 feet below the surface or 300 feet below the deepest known ground water, as defined in § 62.1-255, for a beneficial use, as defined in § 62.1-10, whichever is deeper;

8. Freshwater-based drilling mud is used during drilling;

9. There is no onsite disposal of drilling muds, produced contaminated fluids, waste contaminated fluids or other contaminated fluids;

10. Multiple blow-out preventers are employed; and

11. The person complies with all requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 and regulations promulgated thereunder.

G. The provisions of subsection A and subdivisions 1 and 4 through 9 of subsection F of this section shall be enforced consistent with the requirements of Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1.

H. In the event that exploration activities in Tidewater Virginia result in a finding by the Director of the Department of Mines~~,~~ *and* Minerals ~~and Energy~~ that production of commercially recoverable quantities of oil is likely and imminent, the Director of the Department of Mines~~,~~ *and* Minerals ~~and Energy~~ shall notify the Secretary of Commerce and Trade and the Secretary of Natural Resources. At that time, the Secretaries shall develop a joint report to the Governor and the General Assembly assessing the environmental risks and safeguards; transportation issues; state-of-the-art oil production well technology; economic impacts; regulatory initiatives; operational standards; and other matters related to the production of oil in the region. No permits for oil production wells shall be issued until (i) the Governor has had an opportunity to review the report and make recommendations, in the public interest, for legislative and regulatory changes, (ii) the General Assembly, during the next upcoming regular session, has acted on the Governor's recommendations or on its own initiatives, and (iii) any resulting legislation has become effective. The report by the Secretaries and the Governor's recommendations shall be completed within eighteen months of the findings of the Director of the Department of Mines~~,~~ *and* Minerals ~~and Energy~~.

§ 62.1-243. Withdrawals for which surface water withdrawal permit not required.

A. No surface water withdrawal permit shall be required for (i) any nonconsumptive use, (ii) any water withdrawal of less than 300,000 gallons in any single month, (iii) any water withdrawal from a farm pond collecting diffuse surface water and not situated on a perennial stream as defined in the United States Geological Survey 7.5-minute series topographic maps, (iv) any withdrawal in any area which has not been declared a surface water management area, or (v) any withdrawal from a wastewater treatment system permitted by the State Water Control Board or the Department of Mines~~,~~ *and* Minerals ~~and Energy~~.

B. No political subdivision or investor-owned water company permitted by the Department of Health shall be required to obtain a surface water withdrawal permit for:

1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

3. Any withdrawal in existence on July 1, 1989, from an instream impoundment of water used for public water supply purposes; however, during periods when permit conditions in a surface water management area are in force under regulations adopted by the Board pursuant to § 62.1-249, and when the rate of flow of natural surface water into the impoundment is equal to or less than the average flow of natural surface water at that location, the Board may require the release of water from the impoundment at a rate not exceeding the existing rate of flow of natural surface water into the impoundment.

Withdrawals by a political subdivision or investor-owned water company permitted by the Department of Health shall be affected by subdivision 3 of subsection B only at the option of that political subdivision or investor-owned water company.

To qualify for any exemption in subsection B of this section, the political subdivision making the withdrawal, or the political subdivision served by an authority making the withdrawal, shall have instituted a water conservation program approved by the Board which includes: (i) use of water saving plumbing fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code; (ii) a water loss reduction program; (iii) a water use education program; and (iv) ordinances prohibiting waste of water generally and providing for mandatory water use restrictions, with penalties, during water shortage emergencies. The Board shall review all such water conservation programs to ensure compliance with (i) through (iv) of this paragraph.

C. No existing beneficial consumptive user shall be required to obtain a surface water withdrawal permit for:

1. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

2. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received a § 401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

To qualify for either exemption in subsection C of this section, the beneficial consumptive user shall have instituted a water management program approved by the Board which includes: (i) use of water-saving plumbing; (ii) a water loss reduction program; (iii) a water use education program; and (iv) mandatory reductions during water shortage emergencies. However, these reductions shall be on an equitable basis with other uses exempted under subsection B of this section. The Board shall review all such water management programs to ensure compliance with (i) through (iv) of this paragraph.

D. The Board shall issue certificates for any withdrawals exempted pursuant to subsections B and C of this section. Such certificates shall include conservation or management programs as conditions thereof.

§ 62.1-256. Duties of Board.

The Board shall have the following duties and powers:

1. To issue ground water withdrawal permits in accordance with regulations adopted by the Board;

2. To issue special orders as provided in § 62.1-268;

3. To study, investigate and assess ground water resources and all problems concerned with the quality and quantity of ground water located wholly or partially in the Commonwealth, and to make such reports and recommendations as may be necessary to carry out the provisions of this chapter;

4. To require any person withdrawing ground water for any purpose anywhere in the Commonwealth, whether or not declared to be a ground water management area, to furnish to the Board such information with regard to such ground water withdrawal and the use thereof as may be necessary to carry out the provisions of this chapter, excluding ground water withdrawals occurring in conjunction with activities related to exploration for and production of oil, gas, coal or other minerals regulated by the Department of Mines~~,~~ *and* Minerals ~~and Energy~~;

5. To prescribe and enforce requirements that naturally flowing wells be plugged or destroyed, or be capped or equipped with valves so that flow of ground water may be completely stopped when said ground water is not currently being applied to a beneficial use;

6. To enter at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs, and to duly authorize agents to do the same, to ensure compliance with any permits, standards, policies, rules, regulations, rulings and special orders which it may adopt, issue or establish to carry out the provisions of this chapter;

7. To issue special exceptions pursuant to § 62.1-267;

8. To adopt such regulations as it deems necessary to administer and enforce the provisions of this chapter; and

9. To delegate to its Executive Director any of the powers and duties invested in it to administer and enforce the provisions of this chapter except the adoption and promulgation of rules, standards or regulations; the revocation of permits; and the issuance, modification, or revocation of orders except in case of an emergency as provided in subsection B of § 62.1-268.

§ 62.1-259. Certain withdrawals; permit not required.

No ground water withdrawal permit shall be required for (i) withdrawals of less than 300,000 gallons a month; (ii) temporary construction dewatering; (iii) temporary withdrawals associated with a state-approved ground water remediation; (iv) the withdrawal of ground water for use by a ground water heat pump where the discharge is reinjected into the aquifer from which it is withdrawn; (v) the withdrawal from a pond recharged by ground water without mechanical assistance; (vi) the withdrawal of water for geophysical investigations, including pump tests; (vii) the withdrawal of ground water coincident with exploration for and extraction of coal or activities associated with coal mining regulated by the Department of Mines~~,~~ *and* Minerals ~~and Energy~~ ; (viii) the withdrawal of ground water coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other ground water users within a ground water management area; (ix) the withdrawal of ground water in any area not declared a ground water management area; or (x) the withdrawal of ground water pursuant to a special exception issued by the Board.

2. That Chapter 26 of Title 45.1, consisting of sections numbered 45.1-390, 45.1-391, and 45.1-392,

737 of the Code of Virginia is repealed.