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SENATE BILL NO. 262

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 23-135.7:6, 45.1-390, 58.1-322, and 58.1-3660 of the Code of Virginia and to amend the Code of Virginia by adding a Title numbered 67, consisting of chapters numbered 1 through 12, containing sections numbered 67-100 through 67-1203, relating to energy policy; sites for certain low-emission energy facilities; off-shore energy resource development; grants and income tax deductions for purchasing, producing or using clean and efficient energy; exempting certain certified pollution control equipment and facilities from local property taxation; clean coal projects; energy efficiency in state buildings; use of biodiesel fuel in public transportation vehicles; the enforceability of covenants restricting the use of solar energy collection devices; motor vehicle fuel efficiency standards; and the establishment of a methane hydrates research center, all of which comprise components of the Virginia Energy Plan.

Patrons—Wagner, Bell, Blevins, Devolites Davis, Hanger, Newman, Quayle, Ruff, Stosch, Wampler, Watkins and Williams; Delegates: Marshall, D.W. and Purkey

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-135.7:6, 45.1-390, 58.1-322, and 58.1-3660 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a Title numbered 67, consisting of chapters numbered 1 through 12, containing sections numbered 67-100 through 67-1203, as follows:

§ 23-135.7:6. Powers and duties of Center.

The Center, under the direction of the executive director, shall have the following powers and duties:

1. To develop a degree program in energy production and conservation research at the master's level in conjunction with the State Council on Higher Education;

2. To develop and provide programs of continuing education and in-service training for persons who work in the field of coal or other energy research, development or production;

3. To operate in conjunction with other departments of Virginia Polytechnic Institute and State University, including but not limited to the Department of Mining Engineering;

4. To conduct research in the fields of coal, coal utilization, migrating natural gases such as methane and propane, and other energy related work;

5. To collect and maintain data on energy production, development and utilization;

6. To foster the utilization of research information, discoveries and data;

7. To coordinate the functions of the Center with the energy research facilities to prevent duplication of effort;

8. To apply for and accept grants from the United States government and the state government and agencies and instrumentalities thereof and from any other source in carrying out the purposes of this article. To these ends, the Center shall have the power to comply with conditions and execute such agreements as may be necessary;

9. To accept gifts, bequests, and any other thing of value to be used for carrying out the purposes of this article;

10. To receive, administer and expend all funds and other assistance made available to the Center for the purposes of carrying out this article; ~~and~~

11. *To consult with the Division of Energy of the Department of Mines, Minerals and Energy in the preparation of the Virginia Energy Plan pursuant to § 67-201; and*

12. To do all things necessary or convenient for the proper administration of this article.

§ 45.1-390. Division of Energy established; findings and policy; powers and duties.

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 in the Department of Mines, Minerals and Energy. The Director shall have the immediate 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 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.

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 liaison 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 efforts by and among Virginia businesses, industries, utilities, academic institutions, state and local governments and private institutions to develop energy conservation programs and energy resources; and

4. *In consultation with the State Corporation Commission and the Center for Coal and Energy Research, prepare the Virginia Energy Plan pursuant to § 67-201; and*

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

§ 58.1-322. Virginia taxable income of residents.

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications specified in this section.

B. To the extent excluded from federal adjusted gross income, there shall be added:

1. Interest, less related expenses to the extent not deducted in determining federal income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which Virginia is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum distribution allowance and any amount excludable for federal income tax purposes that is excluded from federal adjusted gross income solely by virtue of an individual's election to use the averaging provisions under § 402 of the Internal Revenue Code; and

5. through 8. [Repealed.]

9. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

C. To the extent included in federal adjusted gross income, there shall be subtracted:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth or of any political subdivision or instrumentality of the Commonwealth.

3. [Repealed.]

4. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.

4a. Through December 31, 2000, the same amount used in computing the federal credit allowed under § 22 of the Internal Revenue Code by a retiree under age 65 who qualified for such retirement on the basis of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under this subdivision.

4b. For taxable years beginning on or after January 1, 2001, up to $20,000 of disability income, as defined in § 22 (c) (2) (B) (iii) of the Internal Revenue Code; however, any person who claims a deduction under subdivision 5 of subsection D of this section may not also claim a subtraction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not

deducted for federal purposes on account of the provisions of § 280C (a) of the Internal Revenue Code.

7, 8. [Repealed.]

9. [Expired.]

10. Any amount included therein less than $600 from a prize awarded by the State Lottery Department.

11. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from 39 calendar days of such service or $3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the deductions specified herein.

12. Amounts received by an individual, not to exceed $1,000 in any taxable year, as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

13. [Repealed.]

14. [Expired.]

15, 16. [Repealed.]

17. For taxable years beginning on and after January 1, 1995, the amount of "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280C (c) of the Internal Revenue Code and which shall be available to partners, shareholders of S corporations, and members of limited liability companies to the extent and in the same manner as other deductions may pass through to such partners, shareholders, and members.

18. For taxable years beginning on or after January 1, 1995, all military pay and allowances, not otherwise subtracted under this subsection, earned for any month during any part of which such member performed military service in any part of the former Yugoslavia, including the air space above such location or any waters subject to related naval operations, in support of Operation JOINT ENDEAVOR as part of the NATO Peace Keeping Force. Such subtraction shall be available until the taxpayer completes such service.

19. For taxable years beginning on and after January 1, 1996, any income received during the taxable year derived from a qualified pension, profit-sharing, or stock bonus plan as described by § 401 of the Internal Revenue Code, an individual retirement account or annuity established under § 408 of the Internal Revenue Code, a deferred compensation plan as defined by § 457 of the Internal Revenue Code, or any federal government retirement program, the contributions to which were deductible from the taxpayer's federal adjusted gross income, but only to the extent the contributions to such plan or program were subject to taxation under the income tax in another state.

20. For taxable years beginning on and after January 1, 1997, any income attributable to a distribution of benefits or a refund from a prepaid tuition contract or savings trust account with the Virginia College Savings Plan, created pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. The subtraction for any income attributable to a refund shall be limited to income attributable to a refund in the event of a beneficiary's death, disability, or receipt of a scholarship.

21. For taxable years beginning on or after January 1, 1998, all military pay and allowances, to the extent included in federal adjusted gross income and not otherwise subtracted, deducted or exempted under this section, earned by military personnel while serving by order of the President of the United States with the consent of Congress in a combat zone or qualified hazardous duty area which is treated as a combat zone for federal tax purposes pursuant to § 112 of the Internal Revenue Code.

22. For taxable years beginning on or after January 1, 2000, the gain derived from the sale or exchange of real property or the sale or exchange of an easement to real property which results in the real property or the easement thereto being devoted to open-space use, as that term is defined in § 58.1-3230, for a period of time not less than 30 years. To the extent a subtraction is taken in accordance with this subdivision, no tax credit under this chapter for donating land for its preservation shall be allowed for three years following the year in which the subtraction is taken.

23. Effective for all taxable years beginning on or after January 1, 2000, $15,000 of military basic pay for military service personnel on extended active duty for periods in excess of 90 days; however, the subtraction amount shall be reduced dollar-for-dollar by the amount which the taxpayer's military basic pay exceeds $15,000 and shall be reduced to zero if such military basic pay amount is equal to or exceeds $30,000.

24. Effective for all taxable years beginning on and after January 1, 2000, the first $15,000 of salary for each federal and state employee whose total annual salary from all employment for the taxable year is $15,000 or less.

25. Unemployment benefits taxable pursuant to § 85 of the Internal Revenue Code.

26. For taxable years beginning on and after January 1, 2001, any amount received as military retirement income by an individual awarded the Congressional Medal of Honor.

27. Effective for all taxable years beginning on and after January 1, 1999, income received as a result of (i) the "Master Settlement Agreement," as defined in § 3.1-1106; (ii) the National Tobacco Grower Settlement Trust dated July 19, 1999; and (iii) the Tobacco Loss Assistance Program, pursuant to 7 C.F.R. Part 1464 (Subpart C, §§ 1464.201 through 1464.205), by (a) tobacco farmers; (b) any person holding a tobacco marketing quota, or tobacco farm acreage allotment, under the Agricultural Adjustment Act of 1938; or (c) any person having the right to grow tobacco pursuant to such a quota or allotment, but only to the extent that such income has not been subtracted pursuant to subdivision C 18 of § 58.1-402.

28. For taxable years beginning on and after January 1, 2000, items of income attributable to, derived from or in any way related to (i) assets stolen from, hidden from or otherwise lost by an individual who was a victim or target of Nazi persecution or (ii) damages, reparations, or other consideration received by a victim or target of Nazi persecution to compensate such individual for performing labor against his will under the threat of death, during World War II and its prelude and direct aftermath. This subtraction shall not apply to assets acquired with such items of income or with the proceeds from the sale of assets stolen from, hidden from or otherwise lost to, during World War II and its prelude and direct aftermath, a victim or target of Nazi persecution. The provisions of this subdivision shall only apply to an individual who was the first recipient of such items of income and who was a victim or target of Nazi persecution, or a spouse, widow, widower, or child or stepchild of such victim.

"Victim or target of Nazi persecution" means any individual persecuted or targeted for persecution by the Nazi regime who had assets stolen from, hidden from or otherwise lost as a result of any act or omission in any way relating to (i) the Holocaust; (ii) World War II and its prelude and direct aftermath; (iii) transactions with or actions of the Nazi regime; (iv) treatment of refugees fleeing Nazi persecution; or (v) the holding of such assets by entities or persons in the Swiss Confederation during World War II and its prelude and aftermath. A victim or target of Nazi persecution shall also include any individual forced into labor against his will, under the threat of death, during World War II and its prelude and direct aftermath. As used in this subdivision, "Nazi regime" means the country of Nazi Germany, areas occupied by Nazi Germany, those European countries allied with Nazi Germany, or any other neutral European country or area in Europe under the influence or threat of Nazi invasion.

29. For taxable years beginning on and after January 1, 2002, any gain recognized as a result of the Peanut Quota Buyout Program of the Farm Security and Rural Investment Act of 2002 pursuant to 7 C.F.R. Part 1412 (Subpart H, §§ 1412.801 through 1412.811) as follows:

a. If the payment is received in installment payments pursuant to 7 C.F.R. § 1412.807(a) (2), then the entire gain recognized may be subtracted.

b. If the payment is received in a single payment pursuant to 7 C.F.R. § 1412.807(a) (3), then 20 percent of the recognized gain may be subtracted. The taxpayer may then deduct an equal amount in each of the four succeeding taxable years.

30. Effective for all taxable years beginning on and after January 1, 2002, but before January 1, 2005, the indemnification payments received by contract poultry growers and table egg producers from the U.S. Department of Agriculture as a result of the depopulation of poultry flocks because of low pathogenic avian influenza in 2002. In no event shall indemnification payments made to owners of poultry who contract with poultry growers qualify for this subtraction.

31. Effective for all taxable years beginning on or after January 1, 2001, the military death gratuity payment made after September 11, 2001, to the survivor of deceased military personnel killed in the line of duty, pursuant to Chapter 75 of Title 10 of the United States Code; however, the subtraction amount shall be reduced dollar-for-dollar by the amount that the survivor may exclude from his federal gross income in accordance with § 134 of the Internal Revenue Code.

D. In computing Virginia taxable income there shall be deducted from Virginia adjusted gross income as defined in § 58.1-321:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of 18 cents per mile; or

b. Three thousand dollars for single individuals for taxable years beginning on and after January 1, 1989; $5,000 for married persons (one-half of such amounts in the case of a married individual filing a separate return) for taxable years beginning on and after January 1, 1989, but before January 1, 2005; and $6,000 for married persons (one-half of such amounts in the case of a married individual filing a

separate return) for taxable years beginning on and after January 1, 2005; provided that the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for the taxable year may compute the deduction only with respect to earned income.

2. a. A deduction in the amount of $800 for taxable years beginning on and after January 1, 1988, but before January 1, 2005, and $900 for taxable years beginning on and after January 1, 2005, for each personal exemption allowable to the taxpayer for federal income tax purposes.

b. For taxable years beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code shall be entitled to an additional personal exemption in the amount of $800.

The additional deduction for blind or aged taxpayers allowed under this subdivision shall be allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income tax purposes.

3. A deduction equal to the amount of employment-related expenses upon which the federal credit is based under § 21 of the Internal Revenue Code for expenses for household and dependent care services necessary for gainful employment.

4. An additional $1,000 deduction for each child residing for the entire taxable year in a home under permanent foster care placement as defined in § 63.2-908, provided the taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

5. a. Effective for all taxable years beginning on or after January 1, 1996, but before January 1, 2004, a deduction in the amount of $12,000 for taxpayers age 65 or older, or $6,000 for taxpayers age 62 through 64.

b. For taxable years beginning on and after January 1, 2004, a deduction in the amount of $12,000 for individuals born on or before January 1, 1939.

c. For taxable years beginning January 1, 2004, but before January 1, 2005, a deduction in the amount of $6,000 for individuals born on or between January 2, 1940, and January 1, 1942.

d. For taxable years beginning January 1, 2005, but before January 1, 2006, a deduction in the amount of $6,000 for individuals born on or between January 2, 1941, and January 1, 1942.

e. For taxable years beginning on and after January 1, 2004, a deduction in the amount of $12,000 for individuals born after January 1, 1939, who have attained the age of 65. This deduction shall be reduced by $1 for every $1 that the taxpayer's adjusted federal adjusted gross income exceeds $50,000 for single taxpayers or $75,000 for married taxpayers. For married taxpayers filing separately, the deduction will be reduced by $1 for every $1 the total combined adjusted federal adjusted gross income of both spouses exceeds $75,000.

f. For the purposes of this subdivision, "adjusted federal adjusted gross income" means federal adjusted gross income minus any benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code, as amended.

6. For taxable years beginning on and after January 1, 1997, the amount an individual pays as a fee for an initial screening to become a possible bone marrow donor, if (i) the individual is not reimbursed for such fee or (ii) the individual has not claimed a deduction for the payment of such fee on his federal income tax return.

7. a. A deduction shall be allowed to the purchaser or contributor for the amount paid or contributed during the taxable year for a prepaid tuition contract or savings trust account entered into with the Virginia College Savings Plan, pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Except as provided in subdivision 7 c, the amount deducted on any individual income tax return in any taxable year shall be limited to $2,000 per prepaid tuition contract or savings trust account. No deduction shall be allowed pursuant to this section if such payments or contributions are deducted on the purchaser's or contributor's federal income tax return. If the purchase price or annual contribution to a savings trust account exceeds $2,000, the remainder may be carried forward and subtracted in future taxable years until the purchase price or savings trust contribution has been fully deducted; however, except as provided in subdivision 7 c, in no event shall the amount deducted in any taxable year exceed $2,000 per contract or savings trust account. Notwithstanding the statute of limitations on assessments contained in § 58.1-312, any deduction taken hereunder shall be subject to recapture in the taxable year or years in which distributions or refunds are made for any reason other than (i) to pay qualified higher education expenses, as defined in § 529 of the Internal Revenue Code or (ii) the beneficiary's death, disability, or receipt of a scholarship. For the purposes of this subdivision, the term "purchaser" or "contributor" means the person shown as such on the records of the Virginia College Savings Plan as of December 31 of the taxable year. In the case of a transfer of ownership of a prepaid tuition contract or savings trust account, the transferee shall succeed to the transferor's tax attributes associated with a prepaid tuition contract or savings trust account, including, but not limited to, carryover and recapture of deductions.

b. The amount paid for a prepaid tuition contract during taxable years beginning on or after January 1, 1996, but before January 1, 1998, shall be deducted in taxable years beginning on or after January 1, 1998, and shall be subject to the limitations set out in subdivision 7 a.

c. A purchaser of a prepaid tuition contract or contributor to a savings trust account who has attained age 70 shall not be subject to the limitation that the amount of the deduction not exceed $2,000 per prepaid tuition contract or savings trust account in any taxable year. Such taxpayer shall be allowed a deduction for the full amount paid for the contract or contributed to a savings trust account, less any amounts previously deducted. If a prepaid tuition contract was purchased by such taxpayer during taxable years beginning on or after January 1, 1996, but before January 1, 1998, such taxpayer may take the deduction for the full amount paid during such years, less any amounts previously deducted with respect to such payments, in taxable year 1999 or by filing an amended return for taxable year 1998.

8. For taxable years beginning on and after January 1, 2000, the total amount an individual actually contributed in funds to the Virginia Public School Construction Grants Program and Fund, established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1, provided the individual has not claimed a deduction for such amount on his federal income tax return.

9. For taxable years beginning on and after January 1, 1999, an amount equal to 20 percent of the tuition costs incurred by an individual employed as a primary or secondary school teacher licensed pursuant to Chapter 15 (§ 22.1-289.1 et seq.) of Title 22.1 to attend continuing teacher education courses that are required as a condition of employment; however, the deduction provided by this subsection shall be available only if (i) the individual is not reimbursed for such tuition costs and (ii) the individual has not claimed a deduction for the payment of such tuition costs on his federal income tax return.

10. For taxable years beginning on and after January 1, 2000, the amount an individual pays annually in premiums for long-term health care insurance, provided the individual has not claimed a deduction for federal income tax purposes.

11. For taxable years beginning on and after January 1, 2007, an amount equal to 20 percent of the sum paid by an individual pursuant to Chapter 6 (§ 58.1-600 et seq.) of this title, not to exceed $500 in each taxable year, in purchasing for his own use the following items of tangible personal property: (i) any clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy; (ii) any fuel cell that (a) generates electricity using an electrochemical process, (b) has an electricity-only generation efficiency greater than 35%, and (c) has a generating capacity of at least two kilowatts; (iii) any gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling; (iv) any electric heat pump hot water heater that yields an energy factor of at least 1.7; (v) any electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0; (vi) any central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; (vii) any advanced gas or oil water heater that has an energy factor of at least 0.65; (viii) any advanced oil-fired boiler with a minimum annual fuel-utilization rating of 85; and (ix) any advanced oil-fired furnace with a minimum annual fuel-utilization rating of 85.

12. For taxable years beginning on and after January 1, 2007, an amount equal to the motor vehicle sales and use tax paid by the individual vehicle owner pursuant to subdivisions 1, 2, 3, or 5 of subsection A of § 58.1-2402, on any motor vehicle that is (i) manufactured to use clean special fuels, as defined in § 46.2-749.3, and uses such fuels as a source of propulsion; (ii) converted or retrofitted to use such clean special fuels within 180 days after the date of titling in the Commonwealth, and uses such fuels as a source of propulsion; or (iii) a hybrid gasoline/electric powered motor vehicle that is propelled primarily by electric charge, up to a maximum of $500 in tax paid on each such motor vehicle and a maximum of $1,000 in tax paid on multiple motor vehicles in any calendar year; however, a deduction shall not be allowed for such tax on a mobile office, or on a manufactured home as defined in § 36-85.3.

E. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

§ 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.

However, certified pollution control equipment and facilities consisting of equipment used in collecting, processing, and distributing landfill gas or natural gas recovered from waste, including equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for

reuse as landfill gas or natural gas recovery from waste, that are placed in service on or after July 1, 2006, shall be exempt from state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia. In addition, the assessments of certified pollution control equipment and facilities consisting of equipment used in collecting, processing, and distributing landfill gas or natural gas recovered from waste, including equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as landfill gas or natural gas recovery from waste, that were placed in service prior to July 1, 2006, shall be reduced from the levels in effect on July 1, 2006, by one-fifth each year between July 1, 2006, and June 30, 2010, after which date such property shall be exempt from state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia.

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. Such property shall include, but is not limited to, any equipment used to grind, chip, or mulch trees, tree stumps, underbrush, and other vegetative cover for reuse as mulch, compost, *or landfill gas, natural gas recovery from waste* or *other* fuel, *and equipment used in collecting, processing, and distributing landfill gas or natural gas recovered from waste*, whether or not such property has been certified to the Department of Taxation by a state certifying authority.

"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, Minerals and Energy, for coal, oil, and gas production, including gas, natural gas, *landfill 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.

TITLE 67.

VIRGINIA ENERGY PLAN.

CHAPTER 1.

ENERGY POLICY OF THE COMMONWEALTH.

§ 67-100. Legislative findings.

The General Assembly hereby finds that:

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

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

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

§ 67-101. Energy objectives.

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

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

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

3. Establishing sufficient supply and delivery infrastructure to maintain reliable energy availability in the event of a disruption occurring to a portion of the Commonwealth's energy matrix;

4. Using energy resources more efficiently;

5. Facilitating conservation;

6. 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 subdivision 2 of § 67-100;

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

8. Researching the efficacy, cost, and benefits of reducing, avoiding, or sequestering the emissions of greenhouse gases produced in connection with the generation of energy;

9. Removing impediments to the use of abundant low-cost energy resources located within and outside the Commonwealth and ensuring the economic viability of the producers, especially those in the Commonwealth, of such resources; and

10. Recognizing the need to foster the development of those economically developable alternative sources of energy that can be provided at market prices as vital components of a diversified portfolio of energy resources.

Nothing in this section shall be deemed to abrogate or modify in any way the provisions of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq.).

§ 67-102. Commonwealth Energy Policy.

A. To achieve the objectives enumerated in § 67-101, it shall be 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 sufficient to support the demands of growth;

3. Promote research and development of clean coal technologies, including but not limited to integrated gasification combined cycle systems;

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

5. Ensure the availability of affordable natural gas throughout the Commonwealth by expanding Virginia's natural gas distribution and transmission pipeline infrastructure, developing coalbed methane and offshore gas resources, including methane hydrate resources, and siting one or more liquefied natural gas terminals;

6. Promote the generation of electricity through nuclear power and other technologies that do not contribute to greenhouse gases and global warming;

7. Study the removal of regulatory impediments to the development and exploitation of the Commonwealth's non-fossil fuel resources;

8. Facilitate the development of new, and the expansion of existing, petroleum refining facilities within the Commonwealth;

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

10. Support efforts to reduce the demand for imported petroleum by developing alternative technologies, including but not limited to the production of synthetic fuels, biodiesel and hydrogen-based fuels, and the infrastructure required for the widespread implementation of such technologies; and

11. Ensure that energy generation and delivery systems that may be approved for development in the Commonwealth, including liquefied natural gas, offshore gas drilling, and related delivery systems, should be located so as to minimize impacts to pristine natural areas and other significant onshore natural resources, and as near to compatible development as possible.

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 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.

CHAPTER 2.

VIRGINIA ENERGY PLAN.

§ 67-200. Definitions.

As used in this title:

"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.

§ 67-201. Development of the Virginia Energy Plan.

A. The Division, in consultation with the State Corporation Commission, the Department of Environmental Quality, and the Center for Coal and Energy Research, shall prepare a comprehensive Virginia Energy Plan covering a 10-year period. The Plan shall propose actions, consistent with the objectives enumerated in § 67-101, that will implement the Commonwealth Energy Policy set forth in § 67-102.

B. In addition, the Plan shall include:

1. Projections of energy consumption in the Commonwealth, including but not limited to the use of fuel sources and costs of electricity, natural gas, gasoline, coal, renewable resources, and other forms of energy resources 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 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;

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 the feasibility, costs, benefits, and necessary components, including budgetary, staffing, and legal requirements, of a state program to regulate the development and use of non-fossil fuel resources;

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

8. Recommendations, based on the analyses completed under subdivisions 1 through 6, for legislative, regulatory, and other public and private actions to implement the elements of the Commonwealth Energy Policy.

C. In preparing the Plan, the Division and other agencies involved in the planning process shall utilize the Virginia Coastal Zone Management Program's Geospatial and Educational Mapping System website, to the extent deemed practicable, as a planning tool to ensure that energy facilities are not located in sensitive natural areas.

§ 67-202. Schedule.

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

B. Prior to completion of the Plan, the Division shall present drafts to, and consult with, the Coal and Energy Commission and the Commission on Electric Utility Restructuring.

C. The Plan shall be updated by the Division no less frequently than every five years.

§ 67-203. Submission of Plan.

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

CHAPTER 3.

OFFSHORE ENERGY RESOURCES.

§ 67-300. Offshore natural gas resources.

A. In addition to its responsibilities enumerated in § 2.2-302, the Virginia Liaison Office shall work with the members of the State Congressional Delegation and federal executive agencies to develop, support, and enact federal legislation, and to take appropriate federal executive action, that will (i) provide an exemption to the moratorium that prevents until 2012 any surveying, exploration, development, or production of potential natural gas deposits in areas off the Commonwealth's Atlantic shore that are under federal jurisdiction, (ii) incorporate revenue sharing between the federal and state governments for leasing activity that potentially will provide the Commonwealth with significant additional sources of revenue, and (iii) otherwise will enhance states' authority over coastal and offshore resources. The moratorium exemption to be sought by the Virginia Liaison Office shall (i) permit surveying, mapping, exploration, development, and production of offshore deposits of natural gas; and (ii) not authorize drilling or other exploratory activity within the Chesapeake Bay.

B. The Office shall submit an annual report to the Governor and the chairs of the Senate Committee on Commerce and Labor and the House Committee on Commerce and Labor, no later than January 1 of each year, that summarizes the status of the moratorium on offshore natural gas exploration, development, and production activities; efforts by Congress and executive agencies to provide an exemption to the moratorium as described in subsection A; and activities by the Office in furtherance of this section.

§ 67-301. Offshore wind energy resources.

A. In addition to its responsibilities enumerated in § 2.2-302, the Virginia Liaison Office shall work with the members of the State Congressional Delegation and federal executive agencies to develop, support, and enact federal legislation, and to take appropriate federal executive action, that will enable the Commonwealth to exercise exclusive jurisdiction with respect to analyzing, developing, and harvesting offshore wind energy resources.

B. The Office shall submit an annual report to the Governor and the chairs of the Senate Committee on Commerce and Labor and the House Committee on Commerce and Labor, no later than January 1 of each year, that summarizes the activities by the Office in furtherance of this section.

§ 67-302. State Offshore Energy Revenue Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the State Offshore Energy Revenue Fund, hereafter referred to as the "Fund." The Fund shall be established on

the books of the Comptroller and 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.

B. The Comptroller shall transfer to the Fund at the close of each fiscal year all license fees, lease payments, royalties, and similar moneys paid by the federal government to the Commonwealth attributable to the development of energy resources in areas off the Commonwealth's Atlantic shore that are under federal jurisdiction.

C. For purposes of any appropriation act enacted by the General Assembly and for the purposes of the Comptroller's preliminary and final annual reports required by § 2.2-813, all deposits to and appropriations from the Fund shall be accounted for and considered to be a part of the general fund of the state treasury.

D. In addition to such other funds as may be appropriated:

1. Forty percent of the moneys transferred to the State Offshore Energy Revenue Fund shall be appropriated to the Virginia Water Quality Improvement Fund established pursuant to § 10.1-2128, exclusively for the purpose of funding point and nonpoint source pollution prevention, reduction, and control programs and efforts;

2. Forty percent of the moneys transferred to the State Offshore Energy Revenue Fund shall be appropriated to the Transportation Trust Fund established pursuant to § 33.1-23.03:1;

3. Five percent of the moneys transferred to the State Offshore Energy Revenue Fund shall be appropriated to the Renewable Electricity Production Grant Fund established pursuant to § 67-1102;

4. Five percent of the moneys transferred to the State Offshore Energy Revenue Fund shall be appropriated to the Photovoltaic, Solar, and Wind Energy Utilization Grant Fund established pursuant to § 67-1202;

5. Five percent of the moneys transferred to the State Offshore Energy Revenue Fund shall be appropriated to the Clean Coal Technology Research Fund established pursuant to § 67-403; and

6. Five percent of the moneys transferred to the State Offshore Energy Revenue Fund shall be appropriated to the Virginia Methane Hydrates Research Center established pursuant to § 67-700, or other alternative energy projects as may be provided in the general appropriations act.

CHAPTER 4.
CLEAN COAL PROJECTS.

§ 67-400. Definitions.

As used in this chapter:

"Center" means the Virginia Center for Coal and Energy Research.

"Clean coal project" means any project that uses any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that 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 is not in widespread use, or is otherwise defined as clean coal technology pursuant to 42 U.S.C. § 7651n.

§ 67-401. 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.

§ 67-402. Center for excellence for clean coal technologies.

A. The Center shall encourage qualified state institutions of higher education to apply to the U.S. Secretary of Energy, pursuant to § 404 of the federal Energy Policy Act of 2005, for competitive, merit-based grants to be used to assist in financing the establishment in the Commonwealth of a center of excellence for advancing new clean coal technologies.

B. The Center shall be authorized to provide such assistance it deems reasonable and appropriate to qualified state institutions of higher education that elect to apply for grants pursuant to subsection A.

§ 67-403. Clean Coal Technology Research Fund.

A. There is hereby established in the state treasury a special nonreverting fund to be known as the Clean Coal Technology Research Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time, including such moneys as are provided pursuant to subsection D of § 67-301. 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 grants to state institutions of higher education to assist in the development and implementation of clean coal technologies. The Center shall administer the Fund.

B. The Center shall award such grants to applying eligible institutions based on a competitive basis.

C. The Center 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 Center shall (i) determine the amount of the grants to be allocated to eligible institutions, and (ii) certify to the Comptroller and each eligible grant applicant the amount of the grant allocated to successful applicants. Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within 60 days of such certification.

CHAPTER 5.
ENERGY EFFICIENT PUBLIC BUILDINGS.

§ 67-500. Definitions.

As used in this chapter, unless the context requires otherwise:

"Alternative energy system" means solar, wind, geothermal, heat recovery or other systems that use a renewable resource and are environmentally sound.

"Authorized state agency" means any agency, board, commission, or department of the Commonwealth that is authorized to finance the construction, purchase or renovation of buildings or other structures to be used by the Commonwealth.

"Cost-effective" means that an energy resource, facility, or conservation measure during its life cycle results in delivered power costs to the ultimate consumer no greater than the comparable incremental cost of the least cost alternative new energy resource, facility, or conservation measure. Cost comparison shall include, but need not be limited to: (i) cost escalations and future availability of fuels; (ii) waste disposal and decommissioning costs; (iii) transmission and distribution costs; (iv) geographic, climatic and other differences within the Commonwealth; and (v) environmental impact.

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

"Energy conservation measure" means a measure primarily designed to reduce the use of nonrenewable energy resources in a state-owned facility.

"Energy consumption analysis" means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment, and components and the external energy load imposed on a major facility by the climatic conditions of its location. "Energy consumption analysis" includes, but is not limited to:

1. The comparison of a range of alternatives that is likely to include all reasonable, cost-effective energy conservation measures and alternative energy systems;

2. The simulation of each system over the entire range of operation of a major facility for a year's operating period;

3. The evaluation of energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs; and

4. The consideration of alternative energy systems.

"Energy systems" means all utilities, including but not limited to heating, air conditioning, ventilating, lighting and the supply of domestic hot water.

"Major facility" means any state-owned building having 10,000 square feet or more of usable floor space.

"Renovation" means any addition to, alteration of or repair of a facility that will involve addition to or alteration of the facility's energy systems, provided that the affected energy systems account for 50% or more of the facility's total energy use.

§ 67-501. Energy design requirements; rules; fees; waiver.

A. An authorized state agency may construct or renovate a facility only if the authorized state agency determines that the design incorporates all reasonable cost-effective energy conservation measures and alternative energy systems. The determination by the authorized state agency shall include consideration of operation and maintenance costs.

B. Whenever an authorized state agency determines that any major facility is to be constructed or renovated the agency shall cause to be included in the design phase of the construction or renovation a provision that requires an energy consumption analysis identifying all reasonable cost-effective energy conservation measures and alternative energy systems be prepared for the facility under the direction of a professional engineer or licensed architect. The authorized agency shall consult with the Division regarding the list of energy conservation measures and alternative energy systems to be analyzed. The analysis and facility design shall be delivered to the Division during the design development phase of the facility design. The Division shall review the analysis and forward its findings to the authorized state agency within 10 working days after receiving the analysis, if practicable.

C. The Division, in consultation with the Department of General Services and the State Council of Higher Education, shall adopt regulations to carry out the provisions of this chapter. These regulations shall:

1. Include a simplified and usable method for determining which energy conservation measures and alternative energy systems are cost-effective. The method shall reflect the energy costs of the utility

serving the facility.

2. Prescribe procedures for determining if a facility design incorporates all reasonable cost-effective energy conservation measures and alternative energy systems.

3. Reimburse the Division for its cost of reviewing of energy consumption analyses and facility designs and its reporting tasks. The Division may waive any reimbursement of fees for its reviews if the authorized state agency demonstrates that the facility will be designed and constructed in a manner that incorporates only cost-effective energy conservation measures or in a manner that exceeds the energy conservation provisions of the state building code by 20% or more.

4. Periodically define highly efficient facilities. A facility constructed or renovated after July 1, 2006, shall exceed the energy conservation provisions of the state building code by 20% or more, unless otherwise required by regulations adopted under this subsection.

CHAPTER 6.

BIODIESEL FUEL.

§ 67-600. Definitions.

As used in this chapter, "biodiesel fuel" means a renewable, biodegradable, mono-alkyl ester combustible liquid fluid fuel from agricultural plant oils or animal fats that meets American Society for Testing and Materials Specification D6751-02 for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

§ 67-601. Requirement for minimum content of biodiesel fuel in vehicles providing public transportation.

A. Every city, county, town, and political subdivision of the Commonwealth, including but not limited to any transportation authority or transportation district, that operates a system of mass transit or public transportation, as defined in § 33.1-12, that utilizes diesel-fuel-powered buses or other vehicles, as a condition for receiving funds from the Commonwealth Mass Transit Fund, shall use in the internal combustion engines in all such buses and other vehicles biodiesel fuel in amounts not less than one percent of the total diesel fuel consumption of such buses and other vehicles by volume.

B. The provisions of subsection A shall become effective on and after the first to occur of (i) July 1, 2007, or (ii) 30 days after the date the Secretary of Commerce and Trade publishes notice in the Virginia Register stating that annual capacity in the Commonwealth for the production of biodiesel fuel exceeds one million gallons.

CHAPTER 7.

VIRGINIA METHANE HYDRATES RESEARCH CENTER.

§ 67-700. Virginia Methane Hydrates Research Center established.

The Virginia Methane Hydrates Research Center, hereinafter referred to as the Research Center, is hereby created to be located at Old Dominion University.

§ 67-701. Functions, powers, and duties of the Research Center.

The Research Center shall serve as an interdisciplinary study, research, and information resource for the Commonwealth on methane hydrates, which are methane-bearing, ice-like materials that occur in marine sediments and in permafrost regions. The Research Center shall (i) consult with the General Assembly, federal, state, and local agencies, nonprofit organizations, private industry and other potential users of research; (ii) establish and administer agreements with other universities of the Commonwealth to carry out research projects relating to the feasibility of recovering fuel gases from hydrates; (iii) disseminate new information and research results; (iv) apply for grants made available pursuant to the federal Methane Hydrate Research and Development Act of 1999, P.L. No: 106-193; and (v) facilitate the application and transfer of new technologies.

§ 67-702. Control and supervision.

The Research Center shall be a unit of Old Dominion University under the supervision and control of the University's board of visitors.

§ 67-703. Appointment of a director.

The board of visitors of Old Dominion University shall appoint a director to serve as the principal administrative officer of the Research Center. The director shall be under the supervision of the president of Old Dominion University or his designee.

§ 67-704. Powers and duties of the director.

The director shall exercise all powers imposed upon him by law, carry out the specific duties imposed on him by the president of Old Dominion University, and develop appropriate policies and procedures for (i) identifying priority 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 methane hydrates within the Commonwealth. The director shall employ such personnel and secure such services as may be required to carry out the purposes of this article, expend appropriated funds and accept moneys from federal or private sources for cost-sharing on projects.

CHAPTER 8.

ENFORCEABILITY OF COVENANTS RESTRICTING SOLAR ENERGY COLLECTION DEVICES.

§ 67-800. Definitions.

As used in this chapter:

"Community association" means a corporation or association 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 corporation or association.

"Covenant restricting solar power" means any specification in any declaration of covenants or restrictions, deed, or other instrument pertaining to the management, regulation, and control of real property that restricts, prohibits, or limits the siting, installation, construction, operation, maintenance, replacement, or use of any solar energy collection device.

"Solar energy collection device" means any device that facilitates the collection and beneficial use of solar energy, including passive heating panels and solar photovoltaic apparatus.

§ 67-801. Covenants restricting solar power void.

A. Any covenant restricting solar power, whether heretofore or hereafter included in an instrument affecting the title to real or leasehold property, is declared to be void and contrary to the public policy of this Commonwealth.

B. A community association shall not enforce, or in any way penalize an owner or lessee of real property for contravening, the provisions of any covenant restricting solar power.

CHAPTER 9.

DESIGNATION OF OPTIMAL LOW-EMISSION ENERGY FACILITY SITES.

Article 1.

General Provisions.

§ 67-900. Findings; public policy.

The General Assembly finds that the present and predicted growth in the demand for electric power by the citizens of the Commonwealth, during a period of growing concerns about emissions from conventional methods of generating electric power, requires the establishment of a procedure for the designation of optimal sites for the location of low-emission energy facilities. The General Assembly further finds that the designation of specific sites as optimal sites in the Commonwealth for the location of a specified type of low-emission energy facility, prior to the filing of an application for a permit or certificate authorizing such use of the site, will significantly benefit the health and welfare of Virginians, the growth of industry, and the quality of air in the Commonwealth by ensuring that such facilities are constructed and operated without unreasonable delay or obstruction.

§ 67-901. Definitions.

As used in this chapter:

"Commission" means the State Corporation Commission.

"Land use plan" means a comprehensive plan adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2.

"Liquefied natural gas facility" or "LNG facility" means a marine terminal with facilities for receiving, gasifying, transmitting, and storing imported liquefied natural gas.

"Low-emission energy facility" means (i) a wind energy facility, (ii) an LNG facility, or (iii) a nuclear power plant.

"Nuclear power facility" means a facility where electricity is generated for commercial use by capturing energy released by a nuclear reaction.

"One-stop permitting process" means any process that may be established by the General Assembly pursuant to which an applicant who is seeking to develop a low-emission energy facility requiring (i) an environmental permit that is subject to issuance by any agency or board within the Secretariat of Natural Resources and (ii) a certificate of public convenience and necessity that is subject to issuance by the Commission, may seek to obtain the issuance of such permits and certificates from a single entity, such as a siting board, that is authorized to issue all such required state permits and certificates in conjunction with a single proceeding.

"Potential energy project site" means a parcel of real property that is (i) owned by the Commonwealth and recommended to the Commission by the Department of General Services as being a potentially suitable location for the location of a low-emission energy facility, (ii) recommended to the Commission by the governing body of a locality as being a potentially suitable location for the location of a low-emission energy facility, which identification shall not be made without the prior written consent of the parcel's owner, or (iii) recommended to the Commission by parcel's owner as being a potentially suitable location for the location of a low-emission energy facility.

"Wind energy facility" means a commercial facility where electricity is generated by multiple wind-powered turbines.

"Zoning ordinance" means an ordinance adopted by a locality to carry out the purposes of Article 7

(§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2.

§ 67-902. Powers of Commission.

In addition to such other powers as it may have, the Commission shall have the following powers:

1. To adopt, amend, or rescind rules and regulations to carry out the provisions of this chapter;

2. To develop and apply procedures for numerically scoring parcels of real property in order to provide a transparent means of comparing the relative suitability of sites for use as low-emission energy facilities;

3. To prescribe the form, content, and necessary supporting documentation for designating sites as optimal sites for low-emission energy facilities;

4. To contract, when appropriate, for independent analyses of the suitability of sites for low-emission energy facilities; and

5. To integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication.

Article 2.

Siting Wind Energy Facilities.

§ 67-903. Development of scoring system for wind energy facility sites.

The Commission shall develop a system for ascribing numerical scores to parcels of real property based on the extent to which the parcels are suitable for the siting of a wind energy facility. The scoring system shall address the wind velocity, sustained velocity, turbulence, proximity to electric power transmission systems, and potential impacts to natural and historic resources. The system developed pursuant to this section shall allow the suitability of the parcel for the siting of a wind energy facility to be compared to the suitability of other parcels so scored, and shall be based on a scale that allows the suitability of the parcel for the siting of a wind energy facility to be measured against the hypothetical score of an ideal location for such a facility.

§ 67-904. Scoring of potential wind energy facility sites.

A. Upon receipt by the Commission of a recommendation from the Department of General Services, a local governing body, or the parcel's owner that a parcel of real property is a potentially suitable location for a wind energy facility, the Commission shall analyze the suitability of the parcel for the location of such a facility. In conducting its analysis, the Commission shall ascribe a numerical score to the parcel using the scoring system developed pursuant to § 67-903.

B. The entity that recommended the parcel to the Commission may bring a proceeding before the Commission to challenge the score ascribed to the parcel.

§ 67-905. Designation of parcels as optimal sites for wind energy facilities.

A. Based on the scores ascribed to parcels that have been recommended to the Commission as potentially suitable locations for a wind energy facility, as such scores may be adjusted as the result of a challenge pursuant to subsection B of § 67-904, the Commission may designate as an optimal site for a wind energy facility any parcel with a score that indicates that the parcel is an excellent location for the construction and operation of a wind energy facility.

B. The Commission shall review its decisions regarding the designation of a parcel as an optimal site for a wind energy facility no less frequently than every five years.

C. A wind energy facility that is proposed for development upon a parcel that has been designated as an optimal site for a wind energy facility shall be eligible for the one-stop permitting process. The approval of a wind energy facility upon the parcel pursuant to the one-stop permitting process shall be deemed to satisfy the requirements of § 15.2-2232 and local zoning ordinances with respect to such wind energy facility.

Article 3.

Siting Liquefied Natural Gas Facilities.

§ 67-906. Development of scoring system for liquefied natural gas facility sites.

The Commission shall develop a system for ascribing numerical scores to parcels of real property based on the extent to which the parcels are suitable for the siting of a liquefied natural gas facility. The scoring system shall address the parcel's docking facilities, proximity to natural gas transmission pipelines, compliance with applicable criteria established by the Federal Energy Regulatory Commission for the permitting of LNG facilities, and the potential impacts of such a facility to natural and historic resources. The system developed pursuant to this section shall allow the suitability of the parcel for the siting of an LNG facility to be compared to the suitability of other parcels so scored, and shall be based on a scale that allows the suitability of the parcel for the siting of an LNG facility to be measured against the hypothetical score of an ideal location for such a facility.

§ 67-907. Scoring of potential liquefied natural gas facility sites.

A. Upon receipt by the Commission of a recommendation from the Department of General Services, a local governing body, or the parcel's owner that a parcel of real property is a potentially suitable location for a liquefied natural gas facility, the Commission shall analyze the suitability of the parcel for the location of such a facility. In conducting its analysis, the Commission shall ascribe a numerical

score to the parcel using the scoring system developed pursuant to § 67-906.

B. The entity that recommended that the parcel to the Commission may bring a proceeding before the Commission to challenge the score ascribed to the parcel.

§ 67-908. Designation of parcels as optimal sites for liquefied natural gas facilities.

A. Based on the scores ascribed to parcels that have been recommended to the Commission as potentially suitable locations for a liquefied natural gas facility, as such scores may be adjusted as the result of a challenge pursuant to subsection B of § 67-907, the Commission may designate a parcel as an optimal site for a liquefied natural gas facility if its score indicates that the parcel is an excellent location for the construction and operation of a liquefied natural gas facility; however, the Commission shall not designate more than three sites in the Commonwealth as optimal sites for an LNG facility.

B. The Commission shall review its decisions regarding the designation of a parcel as an optimal site for an LNG facility no less frequently than every five years.

C. An LNG facility that is proposed for development upon a parcel that has been designated as an optimal site for an LNG facility shall be eligible for the one-stop permitting process. The approval of an LNG facility upon the parcel pursuant to the one-stop permitting process shall be deemed to satisfy the requirements of § 15.2-2232 and local zoning ordinances with respect to such LNG facility.

Article 4.

Siting Nuclear Energy Facilities.

§ 67-909. Development of scoring system for nuclear energy facility sites.

The Commission shall develop a system for ascribing numerical scores to parcels of real property based on the extent to which the parcels are suitable for the siting of a nuclear energy facility. The scoring system shall address the parcel's geological stability, proximity to water resources for cooling purposes, and proximity to electric power transmission lines, and potential impacts of such a facility to natural and historic resources. The system developed pursuant to this section shall allow the suitability of the parcel for the siting of a nuclear energy facility to be compared to the suitability of other parcels so scored, and shall be based on a scale that allows the suitability of the parcel for the siting of a nuclear energy facility to be measured against the hypothetical score of an ideal location for such a facility.

§ 67-910. Scoring of potential nuclear energy facility sites.

A. Upon receipt by the Commission of a recommendation from the Department of General Services, a local governing body, or the parcel's owner that a parcel of real property is a potentially suitable location for a nuclear energy facility, the Commission shall analyze the suitability of the parcel for the location of such a facility. In conducting its analysis, the Commission shall ascribe a numerical score to the parcel using the scoring system developed pursuant to § 67-909.

B. The entity that recommended the parcel to the Commission may bring a proceeding before the Commission to challenge the score ascribed to the parcel.

§ 67-911. Designation of parcels as optimal sites for nuclear energy facilities.

A. Based on the scores ascribed to parcels that have been recommended to the Commission as potentially suitable locations for a nuclear energy facility, as such scores may be adjusted as the result of a challenge pursuant to subsection B of § 67-910, the Commission may designate a parcel as an optimal site for a nuclear energy facility if its score indicates that the parcel is an excellent location for the construction and operation of a nuclear energy facility; however, the Commission shall not designate more than three sites in the Commonwealth as optimal sites for a nuclear energy facility.

B. The Commission shall review its decisions regarding the designation of a parcel as an optimal site for a nuclear energy facility no less frequently than every five years.

C. A nuclear energy facility that is proposed for development upon a parcel that has been designated as an optimal site for a nuclear energy facility shall be eligible for the one-stop permitting process. The approval of a nuclear energy facility upon the parcel pursuant to the one-stop permitting process shall be deemed to satisfy the requirements of § 15.2-2232 and local zoning ordinances with respect to such nuclear energy facility.

D. Notwithstanding the requirements of this section, the existing Surry and North Anna nuclear energy facility sites and other sites determined through the U.S. Nuclear Regulatory Commission licensing process to be suitable for the development of new nuclear generating units shall be deemed to be optimal sites for nuclear energy facilities under this article without further proceedings.

CHAPTER 10.

MOTOR VEHICLE FUEL EFFICIENCY STANDARDS

§ 67-1000. Definitions.

As used in this section:

"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. 94-163), as amended.

"Office" means the Virginia Liaison Office created pursuant to § 2.2-300.

§ 67-1001. Efforts to increase CAFE standards.

In addition to its responsibilities enumerated in § 2.2-302, the Office shall work with the members of the State Congressional Delegation and federal executive agencies to develop, support, and enact federal legislation, and to take appropriate federal executive action, that will increase the CAFE standards from the current standard of 27.5 miles per gallon for passenger automobiles and 20.7 miles per gallon for light trucks to not less than 32.5 miles per gallon for passenger automobiles and 27.5 miles per gallon for light trucks by model year 2015.

§ 67-1002. Report by Virginia Liaison Office.

The Office shall submit an annual report to the Governor and the chairs of the Senate Committee on Commerce and Labor and the House Committee on Commerce and Labor, no later than January 1 of each year, that summarizes the status of the CAFE standards; efforts by Congress and federal executive agencies to increase the CAFE standards; and activities by the Office in furtherance of § 67-1001.

CHAPTER 11.

RENEWABLE ELECTRICITY PRODUCTION GRANT PROGRAM.

§ 67-1100. Definitions.

A. 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 § 67-1102.

"Qualified energy resources" means the same as that term is defined by Internal Revenue Code § 45(c)(1), and includes wind, closed-loop biomass, 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.

§ 67-1101. 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, 2005. The grant amount shall be 0.85 cents for each kilowatt hour of electricity (i) produced by the corporation from qualified energy resources at a qualified Virginia facility and (ii) sold in a calendar year. Grant amounts shall be based on each such kilowatt hour of electricity sold beginning with calendar year 2006.

§ 67-1102. 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, including such moneys as are provided pursuant to subsection D of § 67-301. 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, 2006.

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.

§ 67-1103. 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 kilowatts of electricity were sold. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant for such kilowatts of electricity sold 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 kilowatts of electricity produced by the corporation from qualified energy resources at a qualified Virginia facility that were sold 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 kilowatts of electricity under this chapter may not use the production or sale of such kilowatts of electricity as the basis for claiming any other grant or credit against taxes, as provided under the Code of Virginia or in an appropriations act.

CHAPTER 12.

PHOTOVOLTAIC, SOLAR, AND WIND ENERGY UTILIZATION GRANT PROGRAM.

§ 67-1200. 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 Photovoltaic, Solar, and Wind Energy Utilization Grant Fund established pursuant to § 67-1202.

"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 ten kilowatts, (ii) uses wind as its total source of fuel, (iii) is located on the individual's or corporation's premises, and (iv) is intended primarily to offset all or part of the individual's or corporation's own electricity requirements.

§ 67-1201. 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 2006, 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.

§ 67-1202. Photovoltaic, Solar, and Wind Energy Utilization Grant Fund.

A. There is hereby established in the state treasury a special nonreverting fund to be known as the Photovoltaic, Solar, and Wind Energy Utilization Grant Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time, including such moneys as are provided pursuant to subsection D of § 67-301. 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 individuals or 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 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. 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 individual or 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 photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service prior to January 1, 2006.

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.

§ 67-1203. 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. 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 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. The application 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 appropriations act.

2. That the Department of Mines, Minerals and Energy shall promulgate regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), for purposes of carrying out the provisions of Chapters 11 (§ 67-1100 et seq.) and 12 (§ 67-1200 et seq.) of Title 67 of the Code of Virginia.

3. That the State Corporation Commission and Secretary of Natural Resources shall develop a proposal for a one-stop permitting process, pursuant to which an applicant who is seeking to develop a low-emission energy facility requiring (i) an environmental permit that is subject to issuance by any agency or board within the Secretariat of Natural Resources and (ii) a certificate

of public convenience and necessity that is subject to issuance by the Commission, may seek to obtain the issuance of such permits and certificates from a single entity, such as a siting board, that is authorized to issue all such required state permits and certificates in conjunction with a single proceeding. The State Corporation Commission and Secretary of Natural Resources shall submit their proposal for a one-stop permitting process, together with an analysis of the potential costs and benefits of such a process, to the Governor and the chairmen of the House Committee on Commerce and Labor, the House Committee on Agriculture, Chesapeake and Natural Resources, the Senate Committee on Commerce and Labor, and the Senate Committee on Agriculture, Conservation and Natural Resources by December 1, 2006.

4. That the Department of Taxation shall develop guidelines that describe the items that qualify for the deduction under subdivisions D 11 and 12 of § 58.1-322 for energy-efficient appliances and equipment and for motor vehicles using clean special fuels, and shall make such guidelines available, both electronically and in hard copy, no later than October 1, 2006.