

The Role of the Virginia Coal and Energy Commission in the Transition to a Zero Carbon Economy

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I. INTRODUCTION

Virginia is in the midst of a monumental and necessary transition to develop a carbon free electricity grid by 2050.¹ Although the Virginia Clean Economy Act codified this commitment in 2020, the clean energy transition has actually been underway in the Commonwealth for several years.

The Commonwealth's Renewable Energy Pilot Program is one example of how that transition has progressed. The General Assembly created the program in 2013 and expanded it in 2017. While the rollout of the pilot program has been slower than anticipated, it has nevertheless been modestly successful in increasing customers' access to renewable energy generation.² Discrete initiatives like these remain an important part of Virginia's decarbonization efforts.

In 2018, the General Assembly further accelerated the transition to clean energy by passing the Grid Transformation and Security Act.³ The law encouraged the roll out of "electric distribution grid transformation projects" (including elements such as smart meters) and required cost-effective investments in energy efficiency programs of at least \$870 million in Dominion Energy's service territory and \$140 million in Appalachian Power's service territory. It also paved the way for new solar energy Power Purchase Agreements and construction of the first two wind turbines off the coast of Virginia Beach.

In 2020, the Virginia General Assembly passed what is undoubtedly one of the most significant state laws on clean energy in the nation, the Virginia Clean Economy Act ("VCEA"). The VCEA created a mandatory renewable portfolio standard with accompanying renewable energy

¹ VA. CODE ANN. § 10.1-1308.

² 2013 Va. Acts 599, 630 (as amended by 2017 Va. Acts 1507).

³ 2018 Va. Acts 501.

procurement targets, directed the Commonwealth to join the Regional Greenhouse Gas Initiative (“RGGI”) or create an emission trading program of its own, required hitting efficiency targets before building any new fossil-fuel infrastructure, increased access to net-metering, and encouraged competitive procurement of renewable energy sources. All of these elements are designed to support an overarching goal of making electricity generation and consumption carbon-free in the Commonwealth by 2050.

Building on the VCEA, the General Assembly continued to advance the clean energy transition in the 2021 Legislative Session. The legislature enacted laws to promote energy efficient building codes and investments in energy storage,⁴ expand the Renewable Energy Pilot Program,⁵ increase production of renewable energy,⁶ advance the production and adoption of electrical vehicles,⁷ and sunset a corporate tax credit for companies that mine coal or use coal to generate electricity.⁸

The Virginia Coal and Energy Commission has an opportunity to provide a venue for stakeholders and policymakers to engage in an open forum on the opportunities and challenges presented by all of these clean energy initiatives and programs. This report outlines how the Commission might play that role in the transition to a zero-carbon electricity grid. It reviews the Commission’s authority as specified in the Virginia Code and it matches that authority with policy questions that merit additional exploration.

⁴ H.D. 2227, 2021 Leg., Spec. Sess. (Va. 2021); H.D. 2006, 2021 Leg., Spec. Sess. (Va. 2021); S. 1201, 2021 Leg., Spec. Sess. (Va. 2021); H.D. 2148, 2021 Leg., Spec. Sess. (Va. 2021).

⁵ H.D. 2034, 2021 Leg., Spec. Sess. (Va. 2021).

⁶ H.D. 1856, 2021 Leg., Spec. Sess. (Va. 2021); H.D. 1919, 2021 Leg., Spec. Sess. (Va. 2021); H.D. 1925, 2021 Leg., Spec. Sess. (Va. 2021).

⁷ H.D. 2282, 2021 Leg., Spec. Sess. (Va. 2021); H.D. 1979, 2021 Leg., Spec. Sess. (Va. 2021).

⁸ H.D. 1899, 2021 Leg., Spec. Sess. (Va. 2021).

Simply put, this report seeks to identify ways in which the Commission can best assist the Commonwealth in developing and studying energy policy. It does so by identifying “tipping point” issues, *i.e.*, where the Commission’s engagement could be a deciding factor in helping stakeholders find consensus on all or part of a proposed legislative response.

Part II of this report provides an overview of the statutory language of the Commission’s enumerated powers and mission, and compares the Coal and Energy Commission’s authority with that of other legislative commissions. Part III of the report identifies areas of growing relevance and importance in the Commonwealth that might merit the Coal and Energy Commission’s immediate attention. Part III also recommends the formation of issue-specific workgroups.

Specifically, given the past success that the Commission has had working in smaller, specialized groups (*e.g.*, the Uranium Mining Sub-Committee), the report recommends the creation of two standing workgroups to help the Commission expand its capacity and prioritize its work. The first workgroup might focus on Alternative Energy; the second workgroup could be aimed at Citizen Engagement. Part III also identifies four clean energy topics of growing importance and places those topics within the two workgroups.⁹



⁹ Photo Credit: 5snake5 (identified as public domain at <https://upload.wikimedia.org/wikipedia/commons/2/2f/YellowInProgress.jpg>).

II. BACKGROUND ON THE VIRGINIA COAL AND ENERGY COMMISSION

A. The Commission's Mission

In 1979, the General Assembly established the Virginia Coal and Energy Commission in language that has been amended several times and is now codified at Section 30-188 and Section 30-189 of the Virginia Code.¹⁰ Section 30-188 establishes the Commission as a legislative commission, with thirteen of the Commission's twenty members coming from the State Senate and House of Delegates, and the remaining seven, non-legislative, citizen members appointed by the Governor. Section 30-189 describes the powers and duties of the Commission.

Comparing the Coal and Energy Commission to other similar, legislative commissions helps illustrate the potential role that the Coal and Energy Commission might play in the transition to a zero-carbon economy. As with all legislative study commissions, the Coal and Energy Commission may solicit the cooperation of relevant state agencies, as specified in Section 30-19.8.¹¹ And like other legislative commissions, it may be required to submit regular reports to the General Assembly.¹²

By statute, the Coal and Energy Commission's purpose is to “*study* all aspects of coal as an energy resource and *endeavor* to *stimulate, encourage, promote, and assist* in the development of renewable and alternative energy resources other than petroleum.” While the Commission's mission may be unique, the operative language outlining its authority is not. Several other legislative commissions use this same or similar language in their codified purpose. *Figure 1:*

¹⁰ See Appendix A for the full text of these statutes.

¹¹ Legislative commissions should be distinguished from collegial, executive-branch boards or commissions, which are subject to their own restrictions. See, e.g., VA. CODE ANN. § 2.2-2100 (“Classification of executive branch boards, commissions and councils”); VA. CODE ANN. § 30-19.1:9 (“Duration of [executive branch] state boards and commissions”).

¹² See VA. CODE ANN. § 30-19.8:1.

Comparing Legislative Commissions illustrates the operative language of four such legislative commissions.

Figure 1: Comparing Legislative Commissions	Statute	Budget	Operative Language
Virginia Coal and Energy Commission	§30-189	\$21,630	<i>“study” and “endeavor to stimulate, encourage, promote and assist”</i>
Virginia Housing Commission	§30-257	\$21,630	<i>“study” and “make recommendations”</i>
Virginia State Crime Commission	§30-156	\$1,341,968	<i>“study, report, and make recommendations” and “shall endeavor”</i>
Virginia Commission on Youth	§30-174	\$368,344	<i>“Study and provide recommendations” and “shall encourage”</i>
Chesapeake Bay Commission	§30-240	\$337,309	<i>“assisting”</i>

The Virginia Housing Commission is granted the ability to “study” and “make recommendations.” The Virginia State Crime Commission’s purpose is to “study, report, and make recommendations” and “shall endeavor” to ascertain the causes of crime. The Chesapeake Bay Commission is tasked with “assisting” the General Assembly, while the Commission on Youth shall “study and provide recommendations.” In short, each of these legislative commissions’ chief role is to serve in an advisory capacity. The tradition of short (45-day and 60-day) sessions for Virginia’s part-time, citizen legislature explains the need for such advisory bodies to help expand the capacity of the General Assembly.

Notwithstanding the similarities highlighted above, the Coal and Energy Commission's description is unique in that it specifically says that the Commission has “no authority to adopt regulations.” Of the legislative commissions reviewed for this report, it is the only commission with this

language explicitly included in its purpose. To be sure, similarly situated commissions have *not* been granted the ability to adopt regulations. But there is no explicit denial of authority. Rather, that lack of authority is implied.

Still, the takeaway here is that the Coal and Energy Commission’s focus is on making recommendations and providing advice—a focus that is shared with other legislative commissions discussed in more detail below.

B. Comparison to Other Legislative Commissions

1. The Virginia Housing Commission

The Virginia Housing Commission is a particularly useful example of an influential legislative Commission that is granted similar authority to the Coal and Energy Commission. The statutory authority for the Housing Commission reads as follows:

Code § 30-257: The Virginia Housing Commission (the Commission) is established in the legislative branch of state government. The purpose of the Commission is to study and provide recommendations to ensure and foster the availability of safe, sound affordable housing for every Virginian. The Commission may also study and make recommendations relating to such other housing, real property, and community development issues as it may be called upon to consider or as may be desirable.

The Housing Commission mirrors the structure of the Coal and Energy Commission, with designated seats for members from the House of Delegates, State Senate, and non-legislative citizen members. It also shares similar statutory language, referencing the power to “study” and “make recommendations.” While the Housing Commission is not explicitly barred from adopting regulations, neither is it granted that power. The General Assembly has seen fit to grant both commissions roughly identical budgets of about \$20,000 annually. The Housing Commission also has a full-time staff director in the Division of Legislative Services.

Unlike the Coal and Energy Commission, the Housing Commission has expanded its capacity through the use of workgroups focused on specific housing topics. Notably, each workgroup includes both Commission members and non-Commission participants. The Division of Legislative Services currently lists two workgroups.¹³ The first, a “Common Interest Communities” workgroup, includes five Commissioners and twenty-three non-Commission participants.¹⁴ The second workgroup covers “Affordable Housing, Real Estate Law, and Mortgages/Neighborhood Transitions and Building Codes.” It includes eleven Commission members and twenty-two non-Commission participants.¹⁵ The workgroups provide a collaborative environment for stakeholders, legislators, and Commissioners to engage in round table discussions on prospective legislation. The workgroups focus on legislative ideas that had been introduced as bills in the prior session but failed to pass both General Assembly chambers. The goal in focusing on these ideas is to solicit input from different perspectives and potentially work out the kinks on a legislative initiative. The hope, of course, is consensus might be achieved and a re-worked bill could be introduced in the next session.

The non-Commission stakeholders represented on the workgroups include nonprofit directors and representatives from organizations in housing related industries. The workgroup members include policy experts who had been engaged in the lobbying process (*e.g.*, speaking for or against a bill in Committee). To best identify any points of contention, stakeholders in the workgroups are selected to represent a broad spectrum of perspectives.

¹³ *Virginia Housing Commission: Work Groups*, DIVISION OF LEGISLATIVE SERVICES, <http://dls.virginia.gov/commissions/vhc.htm?x=wkg> (last visited July 16, 2021).

¹⁴ *Common Interest Communities, 2019 Workgroup Members*, DIVISION OF LEGISLATIVE SERVICES, <http://dls.virginia.gov/commissions/VHC/files/2019CICMembers.pdf> (last visited July 16, 2021).

¹⁵ *Affordable Housing, Real Estate Law & Mortgages/Neighborhood Transitions and Building Codes, 2020 Workgroup Members*, DIVISION OF LEGISLATIVE SERVICES, <http://dls.virginia.gov/commissions/VHC/files/2020AffordableHousingMembers.pdf> (last visited July 16, 2021).

Workgroup meetings for the Housing Commission take place two to three times in the interim between legislative sessions, moving through two or three bills at each meeting. Background information on failed legislation from the prior session is provided to all participants, and various amendments are discussed. The workgroups consider re-writing a bill to address different sections of the Virginia Code, reducing the scale of a legislative proposal, or altering language to resolve points of friction. Bills from a workgroup are not discussed by the full Housing Commission until they are considered “passable” and all voices from the workgroup have been heard. *Figure 2: Housing Commission, Example of Recommended Legislation* provides an example of one bill that received the Housing Commission’s endorsement.

Figure 2: Housing Commission, Example of Recommended Legislation

SB 628 Virginia Residential Property Disclosure Act; residential building energy analysis.

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SUMMARY AS PASSED: [\(all summaries\)](#)

Virginia Residential Property Disclosure Act; disclosures for a buyer to beware; residential building energy analyst. Adds obtaining a residential building energy analysis to the disclosure statement furnished to the buyer by the owner of residential real property that the buyer beware and exercise necessary due diligence with respect to determining the condition of real property or any improvements thereon. This bill is a recommendation of the Virginia Housing Commission and is identical to HB 518.

- On August 22, 2019, Senator Scott Surovell presented information about home energy audits to the Affordable Housing and Real Estate Law workgroup and proposed that residential building energy analyses be included in the mandatory disclosure section of the Virginia Residential Property Disclosure Act.
- On September 18, 2019, the workgroup presented an update on its review of legislation on energy audits.
- On October 29, 2019, Senator Surovell gave an update to the Affordable Housing and Real Estate Law workgroup.
- On December 4, 2019, the full Commission met to consider workgroup recommendations.
- On January 7, 2020, Senator Surovell’s energy audits legislation was introduced with the Commission’s recommendation as SB628. It passed the House (77-23) and the Senate (22-18) and was signed into law by Governor Northam on March 6, 2020.

The Virginia Housing Commission’s workgroup approach provides a valuable example of how the Virginia Coal and Energy Commission might carry out its mission to “study all aspects of coal

as an energy resource and endeavor to stimulate, encourage, promote, and assist in the development of renewable and alternative energy resources other than petroleum” and help the Commonwealth transition to a zero-carbon economy. Workgroups expand the capabilities of a legislative commission without significantly impacting a commission’s budget.

2. The Virginia State Crime Commission

Another influential legislative commission granted similar authority as the Coal and Energy Commission is the Virginia State Crime Commission.¹⁶ The statutory authority for the State Crime Commission reads as follows:

Code § 30-256: The Virginia State Crime Commission (the Commission) is established in the legislative branch of state government. The purpose of the Commission shall be to study, report and make recommendations on all areas of public safety and protection. In so doing it shall endeavor to ascertain the causes of crime and recommend ways to reduce and prevent it, explore and recommend methods of rehabilitation of convicted criminals, study compensation of persons in law enforcement and related fields and study other related matters including apprehension, trial and punishment of criminal offenders. The Commission shall make such recommendations as it deems appropriate with respect to the foregoing matters, and shall coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting crimes, crime control and criminal procedure. . .

The State Crime Commission shares a similar structure to the Coal and Energy Commission, including seats designated for members of the House of Delegates, the State Senate, and non-legislative citizen members. Unlike the Coal and Energy Commission, however, the State Crime Commission also designates a seat for the Attorney General or their designee. Both Commission statutes share similar operative language, including authority to “endeavor” and “study, report, and make recommendations.” The Coal and Energy Commission is expressly prohibited from adopting regulations while the State Crime Commission remains silent on this issue. Most significantly, the

¹⁶ *Welcome to the Virginia State Crime Commission*, VIRGINIA STATE CRIME COMMISSION, <http://vscc.virginia.gov/> (last visited July 16, 2021).

State Crime Commission enjoys a much larger budget (\$1,341,968 annually) than the Coal and Energy Commission, allowing it to play a more active role in developing legislation.

The State Crime Commission works in cooperation with Virginia's executive branch, the Attorney General's Office, and the judiciary, along with other states and their agencies. It carries out most of its legislative recommendations by conducting studies on a variety of issues, funding and developing reports, and preparing legislative packages. Some of the issues studied are new each year, while others focus on continuing studies from past years. For example, prior to the 2021 regular session, the State Crime Commission issued recommendations on automatic expungement, mandatory minimum sentences, a pre-trial data project, and sex trafficking.

Figure 3: State Crime Commission, Example of Recommended Legislation

SB 706 Human trafficking; assessments by local departments.

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SUMMARY AS INTRODUCED:

Human trafficking assessments by local departments. Changes the name of sex trafficking assessments to human trafficking assessments and allows local departments of social services conducting such human trafficking assessments to interview the alleged child victim or his siblings without the consent and outside the presence of such child's or siblings' parent, guardian, legal custodian, or other person standing in loco parentis, or school personnel. This bill is a recommendation of the Virginia State Crime Commission. This bill is identical to [HB 1006](#).

- In 2018, the State Crime Commission conducted a study on sex trafficking in Virginia. In a report, it made eleven recommendations, including amendments to the Virginia Code, requests for law enforcement training, additional funding, and more time for continued study.
- In 2019, the Commission continued to study and report on sex trafficking to identify additional areas of concern and offer solutions. Commission members attended a variety of trainings, seminars, and summits in collaboration with government and community stakeholders.
- In 2020, the Commission endorsed two legislative topics based on the 2018 recommendations and additional findings from 2019.
- On January 7, 2020, Senator Mark Obenshain introduced Commission-endorsed legislation as SB706. It passed the Senate (40-0) and the House (98-0) and was signed into law by Governor Northam on March 10, 2020.

Importantly, the State Crime Commission's studies differ from the studies conducted under the auspices of the Coal and Energy Commission (e.g., the Uranium Mining Subcommittee's reports) because the former conducts its own research whereas the latter's studies have been prepared by

third parties. *Figure 3: State Crime Commission, Example of Recommended Legislation* demonstrates how the Commission's legislative recommendations stem from studies and reports.

The State Crime Commission's study-based approach differs from the Housing Commission's workgroup model. Developing detailed, research-driven studies undoubtedly requires a greater commitment of financial resources than relying on input from volunteer workgroup members. Nevertheless, the State Crime Commission's approach has yielded great success. All of the Commission-endorsed legislation from 2020 passed the General Assembly and was signed into law by the Governor.

3. *The Virginia Commission on Youth*

The Virginia Commission on Youth is a third, valuable example of a legislative commission that is granted comparable authority to the Virginia Coal and Energy Commission.¹⁷ The statutory authority for the Commission on Youth reads as follows:

Code § 30-174: The Virginia Commission on Youth (the Commission) is established in the legislative branch of state government. The purpose of the Commission shall be to study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families. In so doing, it shall encourage the development of uniform policies and services to youth across the Commonwealth and provide a forum for continuing review and study of such services. In addition to its own proposals, the Commission shall coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting youth.

The Youth Commission shares the same structure as the Coal and Energy Commission, including seats designated for members of the House, State Senate, and non-legislative citizen members. Both Commissions share similar statutory operative language. The Commission on Youth's annual budget is larger than that for the Coal and Energy Commission, at \$369,344 annually.

¹⁷ *A Message from the Chair*, COMMISSION ON YOUTH, <http://vcoy.virginia.gov/> (last visited July 16, 2021).

Blending approaches from the State Crime Commission and the Housing Commission, the Commission on Youth uses the organizational structure of workgroups to conduct targeted studies. In 2021, for example, the Commission on Youth had three workgroups, each focused on different objectives: foster care development, youth information sharing, and practices for youths with mental health treatment needs.

Each workgroup created a study plan to identify issues, often referencing a legislative mandate and including a list of stakeholders. Youth Commission workgroups then published their findings in reports and recommendations. These recommendations included requests for other state agencies to implement certain policies, requests for budget amendments, or recommended changes

Figure 4: Commission on Youth, Example of Recommended Legislation

SB 120 Virginia Institutions of Higher Education Substance Use Advisory Committee; established.

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SUMMARY AS PASSED: (all summaries)

Alcoholic beverage control; substance abuse prevention; Virginia Institutions of Higher Education Substance Use Advisory Committee established. Directs the Board of Directors of the Virginia Alcoholic Beverage Control Authority (Board) to establish and appoint members to the Virginia Institutions of Higher Education Substance Use Advisory Committee (Advisory Committee). The bill provides that the goal of the Advisory Committee shall be to develop and update a statewide strategic plan for substance use education, prevention, and intervention at Virginia's public and private institutions of higher education. The bill provides that the Advisory Committee shall consist of representatives from Virginia's public and private institutions of higher education, including students and directors of student health, and such other members as the Board may deem appropriate. This bill is identical to [HB 852](#).

- The 2017 General Assembly failed to adopt proposed budget amendments that would allow the State Council of Higher Education to partner with the Virginia ABC to identify substance use at colleges and implement educational programs.
- On May 24, 2017, the Commission on Youth approved a study plan to undertake the provisions outlined in the proposed (but unadopted) budget amendments.
- On August 31, 2017, the Commission on Youth created a workgroup on college substance use prevention and intervention programs in partnership with members from Virginia ABC, State Council of Higher Education, and other organizations.
- On September 20, 2017, the Commission on Youth shared the workgroup's findings and issued legislative recommendations.
- On December 15, 2017, Senator Barbara Favola introduced Commission-endorsed legislation as SB120. On January 9, 2018, Delegate Christopher Peace introduced identical legislation in the House. Both bills passed the State Senate and House of Delegates unanimously and were signed into law on March 9, 2018.

to the Code of Virginia. *Figure 4: Commission on Youth, Example of Recommended Legislation* provides an example of how the workgroup-and-report system has functioned.

Often, the Commission on Youth will begin by working on an unenacted legislative idea from a prior session. The Commission will then partner with other agencies and organizations to find a path to implement the original bill's goals through non-legislative means. The workgroup approach of the Virginia Commission on Youth is thus quite collaborative and demonstrates how the Virginia Coal and Energy Commission might leverage the expertise of both state agencies and nongovernmental stakeholders.

4. *The Chesapeake Bay Commission*

Lastly, the Virginia Coal and Energy Commission might be compared to the Chesapeake Bay Commission.¹⁸ Of course, the Chesapeake Bay Commission differs from the Commissions previously analyzed in that it is a tristate legislative organization that brings together Virginia, Maryland, and Pennsylvania. Despite this significant difference, the Chesapeake Bay and Coal and Energy Commissions still share similar operative language. The statutory mandate for the Chesapeake Bay Commission reads as follows:

Code § 30-240, §30-247: The Chesapeake Bay Commission, hereinafter designated as "Commission," is hereby created as a tristate legislative commission. . . . The purposes of the signatories in enacting this Agreement are to assist the legislatures of Virginia, Maryland, and Pennsylvania in evaluating and responding to problems of mutual concern relating to the Chesapeake Bay; to promote intergovernmental cooperation; to encourage cooperative coordinated resource planning and action by the signatories and their agencies; to provide, where appropriate, through recommendation to the respective legislature, uniformity of legislative application; to preserve and enhance the functions, powers and duties of existing offices and agencies of government; and to recommend improvements in the existing management system for the benefit of the present and future inhabitants of the Chesapeake Bay region.

¹⁸ *About Us*, CHESAPEAKE BAY COMMISSION, <https://www.chesbay.us/about> (last visited July 16, 2021).

On account of its tristate nature, the Chesapeake Bay Commission has a different structure than the Coal and Energy Commission. Each state contributes one third to the Commission's membership. Among each state's apportionment, seats are designated for members of the Houses of Delegates or Representatives, State Senates, the States' Governors or their designees, and members who are neither legislators nor employees of the executive branch. Both the Chesapeake Bay and Coal and Energy Commission share statutory commands to "assist," "promote," "encourage," and "recommend." The Chesapeake Bay Commission is neither explicitly authorized nor prohibited from adopting regulations. The Chesapeake Bay Commission's budget exceeds that of the Coal and Energy Commission, receiving \$337,309 annually.

Figure 5: Chesapeake Bay Commission, Example of Recommended Legislation

SB 1354 Chesapeake Bay; wastewater treatment, Enhanced Nutrient Removal Certainty Program established.

Introduced by: [Emmett W. Hanger, Jr.](#) | [all patrons](#) ... [notes](#) | [add to my profiles](#)

SUMMARY AS PASSED: [\(all summaries\)](#)

Chesapeake Bay; wastewater treatment; Enhanced Nutrient Removal Certainty Program. Requires the State Water Control Board to adopt regulations establishing a Phase III Watershed Implementation Plan Enhanced Nutrient Removal Certainty Program (ENRC Program), consisting of a number of total nitrogen and total phosphorous waste load allocation reductions assigned to particular water treatment facilities with schedules for compliance. The bill provides that the ENRC Program shall operate in lieu of certain Chesapeake Bay waste load regulations. The bill directs the Board to modify affected discharge permits to incorporate the provisions of the ENRC Program and requires certain compliance plans due from treatment works beginning February 1, 2023, to address the requirements of the ENRC Program.

The bill provides that the funding of certain design and installation costs for implementing nutrient upgrades pursuant to the ENRC Program shall be eligible for grants from the Water Quality Improvement Fund. The bill lists the projects and the total nitrogen or total phosphorus waste load allocation reductions that specified facilities are to complete. The bill provides that when grants to finance nutrient removal technology reach a sum sufficient to fund the completion of the ENRC Program at all publicly owned treatment works, certain General Assembly committees shall review funding needs and mechanisms.

The bill provides that the ENRC Program shall be deemed to implement through January 1, 2026, the Chesapeake Bay Phase III Watershed Implementation Plan. The bill provides that if, after July 1, 2026, Virginia has not achieved its nitrogen pollution reduction commitments in the Phase III Watershed Implementation Plan, the Secretary of Natural Resources may develop an additional watershed implementation plan. This bill is identical to [HB 2129](#).

- On January 12, 2021, Senator Emmett Hanger, Jr. introduced Commission-endorsed legislation as SB1354. On the same day, Delegate Alfonso Lopez introduced identical legislation in the House. Both bills were continued to the 2021 Special Session and both eventually passed the State Senate and the House of Delegates. They were approved by Governor Northam on March 25, 2021.

The Chesapeake Bay Commission meets at least once each quarter. It identifies "advancing legislation at both the state and Federal levels" as its defining role. To fulfil this objective, the Commission develops a different approach for each state, considering cultural, economic, and

ecological variations. The Commission then works with state legislatures to address each jurisdiction's unique responsibilities to the Bay. The Commission publishes a legislative report each year listing its successful legislative endorsements in each state. The Chesapeake Bay Commission's influence is robust. In 2019, Virginia passed and adopted eleven Commission-endorsed bills, six in 2020, and nine in 2021. *Figure 5: Chesapeake Bay Commission, Example of Recommended Legislation* is one example of legislation adopted by the Commonwealth that the Chesapeake Bay Commission endorsed.

Given the funding allocated to it, the Chesapeake Bay Commission focuses heavily on developing and publishing expert reports. The Commission publishes an annual report summarizing its membership and initiatives. The Commission also publishes policy reports that closely analyze a particular issue and may offer policy recommendations, though these reports are published less frequently. In 2017, for example, the Chesapeake Bay Commission published a report on improving technical assistance for farmers and in 2015, it released a report on healthy livestock and streams. The Commission also disseminates federal initiative publications, often focusing on annual federal agency budget requests.

The tristate approach of the Chesapeake Bay Commission helps encourage collaborative solutions, though each state must independently pass bills through its own state legislature. Although the distinctions between the Chesapeake Bay Commission and the Coal and Energy Commission are profound, the Virginia Coal and Energy Commission might look to the Bay's cooperative structure as a framework. Given multi-state initiatives in the energy sector such as the Regional Greenhouse Gas Initiative, regional outreach may be warranted. Additionally, the Chesapeake Bay Commission's use of policy reports provides an example of how the Virginia Coal and Energy

Commission might use similar methods to issue recommendations on specific sectors, like nuclear or renewable energy sources.

III. POTENTIAL AREAS FOR FUTURE COORDINATION AND ENGAGEMENT

After reviewing the background on the Commission's statutory role and the examples from other, similarly situated commissions (above), this report turns now to identify possible areas of further coordination and engagement.

A. Available Resources

Given the limited budget allocated to the Coal and Energy Commission, it may be valuable to tap into resources outside of the Commission to help support its work. There are several such resources that come to mind. Most obvious are those identified in the statutes for the Coal and Energy Commission. First, it bears emphasis that Va. Code § 30-188(e) provides, "The Division of Legislative Services [DLS] shall provide legal, research, policy analysis, and other services as requested by the Commission." The expert staff at DLS have long been an invaluable resource to the Commission, and undoubtedly will remain so. Second, "All agencies of the Commonwealth shall assist the Commission upon request."¹⁹ In the past, this provision has allowed the Department of Mines, Minerals and Energy ("DMME"), the Department of Environmental Quality ("DEQ"), and other entities within state government to generously provide support for the Commission's work. Thirdly, Va. Code § 30-189(a)(7) states that the Commission might coordinate its efforts with the Virginia Center for Coal and Energy Research ("VCCER"), headquartered at Virginia Tech. The General Assembly created VCCER by legislative act in order to study, research, and

¹⁹ VA. CODE ANN. § 30-188(e).

provide information to the Commonwealth.²⁰ Any of these existing resources may be valuable in helping the Coal and Energy Commission develop workgroups (discussed in Part III.B., below).

A new resource that might assist the Commission is the Environmental Law and Community Engagement Clinic at the University of Virginia School of Law. The Clinic provides law students enrolled at UVA with the opportunity to work on real-world environmental cases and projects in a variety of venues. All Clinic work is completed under the supervision of Professor Cale Jaffe, a citizen member of the Coal and Energy Commission. The Clinic would be able, on a *pro bono* basis, to research legislative or public policy questions on behalf of the Commission. The Clinic has completed similar research in prior years. For example, Clinic research has led to the preparation of the following reports²¹:

- *Report on Legal Analysis of Well-Water Contamination and Options for Remediation*, (June 2020) (prepared for the Health Equity and Access Rural Region (HEARR) Project).
- *Legal Report on Executive Order 43*, (May 2020) (prepared for the Weldon Cooper Center for Public Service) (prepared for Virginia Clean Energy).
- *Legal Options for Community Choice Aggregation in Virginia*, (Dec. 2019) (prepared for Virginia Clean Energy).
- *Barriers and Opportunities for Siting Solar Energy Projects on Contaminated Mine Lands in Nevada*, (May 2017) (prepared for the Nature Conservancy).

²⁰ VA. CODE ANN. § 23.1-2623.

²¹ Public Policy Reports Prepared by the Clinic, ENVIRONMENTAL LAW AND COMMUNITY ENGAGEMENT CLINIC, <https://www.law.virginia.edu/academics/clinic/environmental-law-and-community-engagement-clinic> (last visited July 15, 2021).

The Clinic would be available to develop reports on any issue within the purview of the Commission. Research conducted by the Clinic would be tailored to respond to the interests and needs of the members of the Coal and Energy Commission.

B. Possible Opportunities for Further Engagement and Organization

Workgroups provide an accessible, transparent, and collaborative environment for the open discussion of legislative ideas. The Coal and Energy Commission has utilized workgroups in the past. *Figure 6: Uranium Mining Subcommittee* provides information on the Commission's prior Subcommittee on Uranium Mining.

Figure 6: The Uranium Mining Subcommittee

In 2008, the Commission created a subcommittee to work with the Virginia Center for Coal and Energy Research at Virginia Tech and the National Academy of Sciences to compose a study on the scientific, technical, environmental, human health and safety, and regulatory aspects of uranium mining and processing in Virginia. The director of the Center for Coal and Energy Research and Subcommittee members discussed and narrowed the study's scope with public input. The study's purpose was not to make policy recommendations but to collect and analyze information to improve the quality of the policy-making process. That study, *URANIUM MINING IN VIRGINIA: SCIENTIFIC, TECHNICAL, ENVIRONMENTAL, HUMAN HEALTH AND SAFETY, AND REGULATORY ASPECTS OF URANIUM MINING AND PROCESSING IN VIRGINIA*, was published by the National Academies Press in 2012.

The Subcommittee also decided to sponsor a study on uranium mining's socioeconomic impacts and issued a press statement seeking proposals to win the bid to complete the study. The Subcommittee received proposals from six researchers and universities, funded through a \$200,000 grant from the Virginia Tobacco Indemnification and Community Revitalization Commission.

In 2012, both Uranium Mining Subcommittee reports were finalized and presented to the full Commission.

Building off of that experience, the Commission might create new, durable workgroups to assist legislators and stakeholders in the upcoming years. As the Commonwealth works to implement the Virginia Clean Economy Act and moves toward a zero-carbon electricity grid, the role of workgroups might prove essential. Below, we provide greater detail on potential workgroups that might be developed.

1. Decarbonization Subcommittee

a. Expanding “Solar Schools” Initiatives²²

Public school districts throughout the Commonwealth have expressed interest in leveraging solar energy to lower their electricity bills and respond to student concerns about climate change. Through a Decarbonization Subcommittee, the Coal and Energy Commission could hear from relevant stakeholders on how best to move forward.

In 2013, the Virginia General Assembly created a Renewable Energy Pilot Program. Monitored by the State Corporation Commission, the program was intended to provide K-12 schools and other non-



jurisdictional customers with access to zero-carbon, solar energy generation through Power Purchase Agreements (“PPAs”).²³ The Pilot Program initially covered Dominion Energy (“Dominion”) service territory, and in 2017 was broadened to also include Appalachian Power (“APCo”) territory. The size of the program was further expanded in 2020 under the Virginia Clean Economy Act, which increased the maximum capacity of the program to 500 megawatts and increased the maximum capacities of eligible generation facilities to three megawatts.²⁴ To provide greater opportunities for low-income and tax exempt organizations (*e.g.*, churches) to adopt solar energy, the Virginia Clean Economy Act made these groups eligible for the program even if their

²² Photo Credit: Generation180 (identified as public domain at <https://generation180.org/pathways/solar-schools/>).

²³ *Renewable Energy Pilot Programs*, STATE CORP. COMM’N, <https://scc.virginia.gov/pages/Renewable-Energy-Pilot-Program> (last visited July 5, 2021).

²⁴ VA. CODE ANN. § 56-594.02.

solar installations did not meet the minimum requirement size.²⁵ More recently, House Bill 2034 (Chapter 361 of the 2021 Acts of Assembly) confirmed that both jurisdictional and non-jurisdictional customers would be eligible for the program on a first-come, first-serve basis.²⁶

Despite these legislative efforts, solar installations at K-12 schools and other similarly situated organizations have lagged far behind the anticipated demand.²⁷ Neither APCo nor Dominion have reached close to their maximum program capacities. Based on data reported to the State Corporation Commission, 1,687.5 kilowatts of solar projects have been initiated in APCo territory, representing just 4% of the pilot program's total capacity (40,000 kilowatts).²⁸ Dominion territory has seen the installation of 62,403.26 kilowatts of solar projects. That figure still only comprises 7% of the pilot program's total capacity (838,370 kilowatts).²⁹

The Commission, through a Decarbonization Subcommittee, might explore why the program has not reached its maximum capacity in either Dominion or APCo service territories and whether additional policy changes would be beneficial. Because schools and other government entities are non-jurisdictional customers, their rates are set by contracts negotiated between local governments and utilities.³⁰ These contracts also determine access to solar PPAs.³¹ Holding hearings and seeking

²⁵ VA. CODE ANN. § 56-594.02.

²⁶ H.D. 2034, 2021 Leg., Spec. Sess. (Va. 2021).

²⁷ Sarah Vogelsong, *Lawmakers Expanded School Districts' Ability to go Solar. But in Southwest Virginia, a Utility Contract is Getting in the Way*, VIRGINIA MERCURY (Sept. 29, 2020), <https://www.virginiamercury.com/2020/09/29/lawmakers-expanded-school-districts-ability-to-go-solar-but-in-southwest-virginia-a-utility-contract-is-getting-in-the-way/>.

²⁸ *Appalachian Power Company Operational Capacity Management Summary*, STATE CORP. COMM'N (Dec. 31, 2020), https://www.scc.virginia.gov/getattachment/b43235e6-4e9f-45ce-9ab4-8f43ce5379d9/apco_capmgmt.pdf.

²⁹ *Dominion Energy Operational Capacity Management Summary*, STATE CORP. COMM'N (June 6, 2021), https://scc.virginia.gov/getattachment/c8180d3e-76c1-4479-93ce-4232eeb5dc6d/dev_capmgmt.pdf.

³⁰ Chelsea Barnes, *Pushing back on Appalachian Power's Unfair Solar Restrictions for Schools and Governments*, APPALACHIAN VOICES BLOG (Sept. 16, 2020), <https://appvoices.org/2020/09/16/appalachian-power-solar-restrictions/>.

³¹ Laurence Hammack, *New Appalachian Power Contract to Aid Solar Energy at Schools, Other Public Authorities*, ROANOKE TIMES (Jan. 22, 2021), https://roanoke.com/business/local/new-appalachian-power-contract-to-aid-solar-energy-at-schools-other-public-authorities/article_1af421d8-5d02-11eb-b4ea-5baf00a97037.html.

presentations from stakeholders and experts involved in contract development could help the Commission better understand why the program has not been utilized to its full capacity.

The most recent contract affecting local government electricity rates in Dominion’s jurisdictional service territory is publicly available on the website of the Virginia Energy Purchasing Governmental Association.³² Access to solar PPAs has reportedly been a point of contention in APCo’s service territory.³³ The latest contract affecting APCo customers expired in June 2020, and a new contract was not publicly available at the time this report was prepared.³⁴ A Decarbonization Subcommittee might seek comment from stakeholders on the differences between program administration in APCo and Dominion territories and provide the Commission with insight on the challenges ahead for solar PPAs.

With the power to “[i]nvestigate and consider such questions and problems relating to . . . alternative energy sources,”³⁵ the Commission is well-positioned to work with local governments and community advocates to determine how best to fulfill the legislative intent of the Renewable Energy Pilot Program and increase the accessibility of PPAs. Helping to promote the adoption of solar energy throughout the Commonwealth also falls within the Commission’s mission to “stimulate, encourage, promote, and assist in the development of renewable and alternative energy resources”³⁶

³² Contract Materials, VIRGINIA ENERGY PURCHASING GOVERNMENTAL ASSOCIATION, <https://vepga.org/contract-materials/>, (last visited July 6, 2021); *See* BARNES, *supra* note 23.

³³ VOGELSONG, *supra* note 20.

³⁴ BARNES, *supra* note 23.

³⁵ VA. CODE ANN. § 30-189.

³⁶ VA. CODE ANN. § 30-189.

*b. Preparing the Transmission Grid for Growth in Electric Vehicle Sales*³⁷

As the electric vehicle (“EV”) market continues to expand across the country, a Decarbonization Subcommittee also has an opportunity to hear from stakeholders on a wide array of emerging challenges.³⁸ At the time of this writing, nearly 100 new models of EVs are set to hit the market by the end of 2024.³⁹

Electric vehicle policies have proven popular because EVs provide benefits both for the environment and for consumers. Of course, EVs have no tailpipe emissions, thereby reducing air pollution in areas with significant automobile congestion.⁴⁰ And as the electricity transmission grid used to charge EVs decarbonizes (through retirement of coal-fired power plants and expansion of renewable energy capabilities), the carbon footprint of EVs will shrink as well. EVs also make good economic sense for drivers due to lower operating and maintenance costs, while reducing dependence on out-of-state oil and gas resources.⁴¹ Finally, the transition to EVs opens up job opportunities as we build out the EV charging infrastructure here in the Commonwealth.⁴² In fact, House Bill 2118 (Chapter 418 of the 2021 Acts of Assembly) creates a workforce re-development and training program to provide opportunities for Virginians to seize new job opportunities in this growing sector.⁴³

³⁷ Photo Credit: Fairfax County (identified as public domain at <https://www.fairfaxcounty.gov/landdevelopment/electric-vehicle-charging-stations>).

³⁸ See, e.g., Ben Foldy, *The New EVs Hitting the Road in 2021 from GM to Tesla*, WALL ST. J. (Feb. 12, 2021), <https://www.wsj.com/articles/the-new-electric-vehicles-now-hitting-the-road-11613125800#:~:text=Nissan%20Motor%20Co.,debuted%20the%20Leaf%20in%202010>.

³⁹ *Hot New Electric Cars That Are Coming Soon*, CONSUMER REPS. (updated June 4, 2021), <https://www.consumerreports.org/hybrids-evs/hot-new-electric-cars-are-coming-soon/>.

⁴⁰ VIRGINIA CONSERVATION NETWORK, OUR COMMON AGENDA, 78 (Virginia Conservation Network, 2021).

⁴¹ *EV Interest is Growing – State Policy Can Help*, GENERATION180 (Dec. 9, 2020), <https://generation180.org/ev-interest-is-growing-state-policy-can-help/>.

⁴² *Id.*

⁴³ H.D. 2118, 2021 Leg., Spec. Sess. (Va. 2021).

EV adoption in Virginia has increased over the last several years. According to Virginia DMV data, EV registrations ballooned from just 538 vehicles in 2009 to over 14,000 in 2019.⁴⁴ While only 2% of the cars in the Commonwealth are currently EVs, half of Virginians report that they would consider an EV for their next car.⁴⁵ Survey data suggests that a perception of higher upfront costs for EVs remains a barrier.⁴⁶ Consequently, financial incentives can be extremely effective at expanding access and allowing customers to enjoy longer term benefits due to lower costs of ownership.⁴⁷



In 2021, the Virginia General Assembly passed five bills aimed at increasing the accessibility of EVs, two of which specifically address overcoming financial barriers associated with the initial purchase of an EV.⁴⁸

- **SB 1223** (Chapter 326 of the 2021 Acts of Assembly) supports a transition to EVs by amending the Virginia Energy Plan. The amendment requires an analysis of the EV infrastructure needed to support the transportation sector's net-zero carbon target⁴⁹ and

⁴⁴ Brief for Petitioners, at 18 n.36, *Competitive Enterprise Inst. v. Nat'l Highway Traffic Safety Admin.*, No 20-1145 (Ct. App. D.C. Jan. 21, 2021) (citing Comments of Generation180 and the Environmental Law and Community Engagement Clinic, *Ex Parte: Electrification of Motor Vehicles*, Virginia State Corporation Commission, Case No. PUR-2020-00051, <https://scc.virginia.gov/docketsearch/DOCS/4nkq011.PDF> (filed June 23, 2020)).

⁴⁵ Generation180, *VIRGINIA DRIVES ELECTRIC 2020 14* (Generation180, 2020).

⁴⁶ *Id.* at 25.

⁴⁷ *Id.*

⁴⁸ *It's Time to Celebrate Virginia's New EV Policies*, GENERATION180 (Mar. 2, 2021), <https://generation180.org/category/electric-vehicles/>.

⁴⁹ GENERATION180, *supra* note 38; S. 1223, 2021 Leg., Spec. Sess. (Va. 2021).

requires that transportation electrification be tracked to help identify where infrastructure is needed to accelerate EV adoption.⁵⁰

- **HB 2282** (Chapter 268 of the 2021 Acts of Assembly) directs the State Corporation Commission to develop a report on transportation electrification policies and requires any approved utility costs associated with an investment in transportation electrification be recovered only through the utility's rates for generation and distribution (*i.e.*, not through a rider or rate adjustment clause).⁵¹
- **HB 1965** (Chapter 263 of the 2021 Acts of Assembly) seeks to increase the availability of EVs in the state by requiring the State Air Pollution Control Board to implement a low-emissions and zero-emissions vehicle program for cars with a Model Year of 2025 or later.⁵²
- **HB 1979** (Chapter 493 of the 2021 Acts of Assembly) creates an EV Rebate Program to reduce the upfront price of new and used EVs,⁵³ making them more affordable for the citizens. It requires a separate budget amendment to be fully funded.
- **HB 2118** (Chapter 418 of the 2021 Acts of Assembly) establishes an EV Grant Fund and Program to help schools finance the replacement of diesel school buses with electric school buses.⁵⁴ It also requires a budget amendment for funding.

A workgroup focusing on the expansion of EVs in Virginia would fall within the Coal and Energy Commission's purview, as it would help "establish alternative fuel capability within the Commonwealth."⁵⁵ Furthermore, the Commission has the authority to "[m]ake recommendations to the Governor and General Assembly on its own initiative."⁵⁶ The development of the EV market in Virginia presents an opportunity for a Decarbonization Subcommittee within the Commission to seek input from stakeholders on the next steps to be taken and hurdles that must be overcome.

⁵⁰ Trip Pollard, *Support SB 1223*, VIRGINIA CONSERVATION NETWORK, <http://www.vcnva.org/wp-content/uploads/2021/01/SB1223-Transportation-In-Energy-Plan.pdf>, (last visited July 6, 2021).

⁵¹ GENERATION180, *supra* note 38.

⁵² VIRGINIA CONSERVATION NETWORK, *SUPPORT HB 1965* (2021), <http://www.vcnva.org/wp-content/uploads/2021/01/HB1965-Clean-Car-Standards-Talking-Points.pdf>.

⁵³ GENERATION180, *supra* note 38.

⁵⁴ *Id.*

⁵⁵ VA. CODE ANN. § 30-189.

⁵⁶ *Id.*

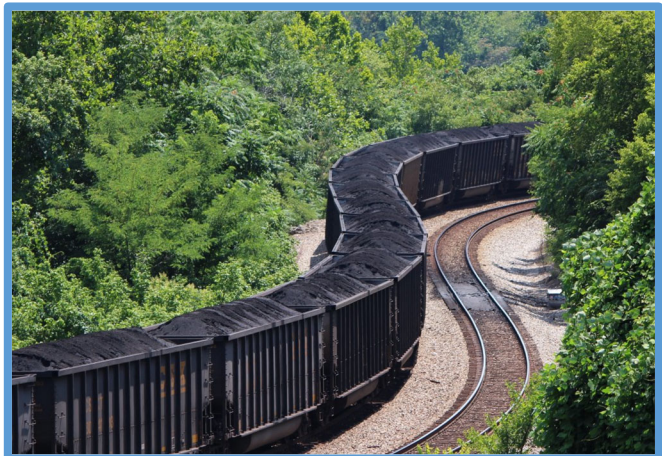
2. Community Outreach Subcommittee

a. A Just Transition from Coal to Clean Energy⁵⁷

The phasing out of fossil fuel-fired generating facilities is required by the Virginia Clean Economy Act and is necessary to urgently respond to the demands of the ongoing climate crisis. As the phase-out progresses, the Commonwealth must take care to support historically coal-dependent communities. The coalfield region of the Commonwealth includes Lee, Wise, Scott, Buchanan, Russell, Tazewell and Dickenson Counties, and the City of Norton.⁵⁸

Through a Community Outreach Subcommittee, the Coal and Energy Commission has an opportunity to engage with stakeholders, the Virginia Coalfield Economic Development Authority, and community members to help ensure that coalfield communities are supported and that the transition to a zero-carbon electricity grid is managed in a way that is just and equitable.

As the energy landscape changes and the need for coal decreases, communities in the coalfield region need support as they diversify their economies.⁵⁹ This is not a new challenge. Indeed, the Virginia Coalfield Economic Development Authority was established in



⁵⁷ Photo Credit: Sarah Vogelsong / Virginia Mercury (July 2019) (identified as public domain at: <https://www.virginiamercury.com/2020/07/24/coal-is-in-crisis-can-virginias-pool-bond-system-handle-the-collapse/>).

⁵⁸ VA. CODE ANN. § 15.2-6002 (describing the purpose and reach of the Virginia Coalfield Economic Development Authority).

⁵⁹ *A New Economy for Appalachia*, APPALACHIAN VOICES, <https://appvoices.org/new-economy/>, (last visited July 7, 2021).

1988 upon a finding that the “economic problems of Southwest Virginia are due in large part to its present inability to diversify.”⁶⁰

Action must be taken at both the national and local levels to support coal-dependent communities in the clean energy transition. At the national level, the Just Transition Fund is a nonprofit organization dedicated to providing support to coalfield communities and supporting cleaner energy alternatives.⁶¹ It has partnered with eighty local, regional, and national organizations to launch the National Economic Transition Platform.⁶² This platform supports cities and towns in Appalachia, the Illinois Basin, Montana, Wyoming, Arizona, and elsewhere.⁶³ Economic development organizations in coal-producing states, labor leaders, and environmental nonprofits have joined to ask President Biden’s administration to fund a “just transition” and create a White House Office of Economic Transition to strengthen the economies of coalfield communities.⁶⁴ In January 2021, the Biden administration established an Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization.⁶⁵ In April 2021, that workgroup issued its initial report.⁶⁶

⁶⁰ VA. CODE ANN. § 15.2-6001.

⁶¹ *Overview*, JUST TRANSITION FUND, <https://www.justtransitionfund.org/overview>, (last visited July 7, 2021).

⁶² *National Economic Transition Platform*, JUST TRANSITION FUND, <https://nationaleconomictransition.org/>, (last visited July 7, 2021).

⁶³ James Bruggers, *A Call for Massive Reinvestment Aims to Reverse Coal Country’s Rapid Decline*, INSIDE CLIMATE NEWS (June 30, 2020), <https://insideclimatenews.org/news/30062020/call-massive-reinvestment-aims-reverse-coal-countrys-rapid-decline/>.

⁶⁴ James Bruggers, *Coal Communities Across the Nation Want Biden to Fund an Economic Transition to Clean Power*, INSIDE CLIMATE NEWS (Jan. 26, 2021), <https://insideclimatenews.org/news/26012021/coal-communities-just-transition-renewable-energy-biden-administration/>.

⁶⁵ *Progress on National Economic Transition Program*, JUST TRANSITION FUND (Mar. 3, 2021), <https://www.justtransitionfund.org/blog/progress-on-the-national-economic-transition-platform>; The White House, *FACT SHEET: Presidential Biden Takes Executive Actions to Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity Across the Federal Government*, WHITE HOUSE BRIEFING ROOM (Jan. 27, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/>.

⁶⁶ The White House, *FACT SHEET: Biden Administration Outlines Key Resources to Invest in Coal and Power Plant Community Economic Revitalization*, WHITE HOUSE BRIEFING ROOM (Apr. 23, 2021),

Closer to home, Appalachian Voices is a regional nonprofit that advocates for healthy communities and environmental protection and has established a “New Economy for Appalachia” program designed to support coalfield communities. It has worked to secure investments to remediate former mine sites, help solar companies establish a foothold in the region, and attract other new businesses to diversify the economy.⁶⁷ The Virginia Coal and Energy Commission, through a Community Outreach Subcommittee, might choose to hold hearings with relevant stakeholders and community members to determine how best to support the coalfield region through the transition to a zero-carbon energy future. The Commission is directed to “[i]nvestigate and consider such questions and problems relating to the field of coal.” As the Commonwealth transitions toward clean energy alternatives, “questions and problems” will undoubtedly arise. A Community Outreach Subcommittee can therefore play an important role in developing transition-related policy.

b. Securing Ratepayer Protection During Grid Modernization⁶⁸

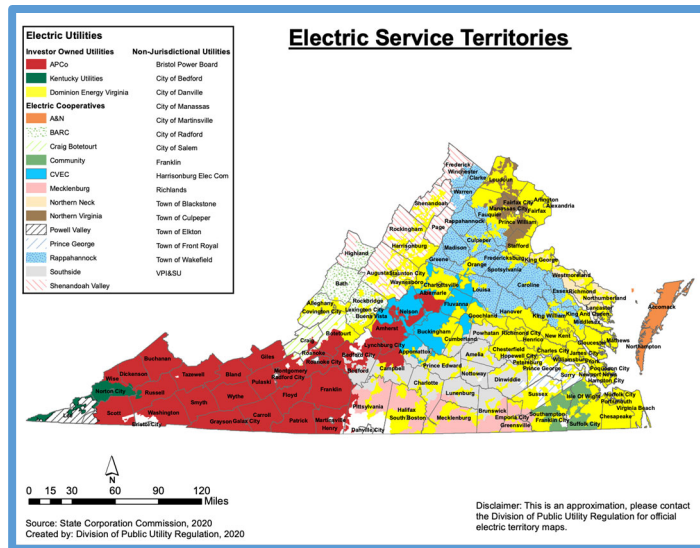
While residential electricity *base rates* in Virginia are lower than the national average, the monthly *electricity bills* are actually higher than the national average, in part due to “riders” (also known as “rate adjustment clauses”) that increase the cost of electricity above base rates.⁶⁹ The transition to a net-zero electricity grid by 2050 provides an opportunity to evaluate rate structures in Virginia,

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/23/fact-sheet-biden-administration-outlines-key-resources-to-invest-in-coal-and-power-plant-community-economic-revitalization/>.

⁶⁷ APPALACHIAN VOICES, *supra* note 52.

⁶⁸ Photo Credit: State Corporation Commission / Division of Public Utility Regulation (2020) (identified as public domain at: https://scc.virginia.gov/getattachment/46ad3b08-b38f-4d1d-be3b-a224e246ec7c/el_map.pdf).

⁶⁹ Virginia’s average monthly residential electricity bill in 2019 was \$135.46, which was 17% greater than the national average of \$115.49. *See Average retail price of electricity to ultimate customers*, ELECTRIC SALES, REVENUE, AND PRICE, EIA (Oct. 5, 2020), <https://www.eia.gov/electricity/data.php>.



and a Community Outreach Subcommittee could be poised to investigate ratepayer protection options.⁷⁰ A ProPublica report identified several alternatives that are already under consideration.⁷¹

The Virginia State Corporation Commission (“SCC”) is obligated to guarantee that an investor-owned electric

utility can earn a “fair rate of return” in exchange for providing reliable electric service to every customer in the utility’s jurisdictional service territory. At the same time, the SCC must ensure that the electricity rates are “just and reasonable” for customers.⁷² Notwithstanding these broad directives, the SCC’s authority to protect customers may be limited.⁷³

During 2021, the General Assembly considered legislation aimed at strengthening the SCC’s role in ratepayer protection. Five ratepayer protection bills that generated the most significant interest were:

- **HB 2200**, which would have provided the SCC with greater discretion in setting returns on equity (*i.e.*, ROE, or profit) for investor-owned utilities and in establishing reasonable rates for customers.⁷⁴

⁷⁰ Sandy Hausman, *Delegates Call for Utility Rate Reform*, WVTF PUBLIC RADIO (Jan. 22, 2021), <https://www.wvtf.org/post/delegates-call-utility-rate-reform#stream/0>.

⁷¹ Patrick Wilson and Mel Leonor, *The People We Serve Are Paying Too Much for Energy: Virginia Lawmakers Are Targeting Dominion Energy*, PROPUBLICA (Jan. 29, 2021, 5:00 AM), <https://www.propublica.org/article/dominion-virginia-legislation>.

⁷² VA. CODE ANN. § 56-234.2; VA. CODE ANN. § 56-585.1.

⁷³ VIRGINIA CONSERVATION NETWORK, SUPPORT HB 1914 (2021), <http://www.vcnva.org/wp-content/uploads/2021/01/HB-1914.pdf>; VIRGINIA CONSERVATION NETWORK, SUPPORT HB 1984 (2021), <http://www.vcnva.org/wp-content/uploads/2021/01/HB-1984.pdf>. See also VA. CODE ANN. § 56-585.1(A)(8).

⁷⁴ H.D. 2200, 2021 Leg., Spec. Sess. (Va. 2021).

- **HB 1914**, which would have provided the SCC with additional authority to establish cost recovery periods for a utility’s largest expenses. As with HB 2200, the legislation sought to balance a utility’s need to recover costs and make a profit with greater SCC discretion to ensure that customers’ rates remain just and reasonable.⁷⁵
- **HB 1984**, which would have given the SCC greater authority to establish rates prospectively as opposed to correcting for overcharges retroactively. It also would have given the SCC greater discretion to adopt a rate-making methodology that it found consistent with the public interest and to determine fair rates of return for utility services.⁷⁶
- **HB 2160**, which would have eliminated certain “basis point” bonuses that utilities are currently eligible to receive on top of an approved return on equity and would have restored the SCC’s authority to refund 100% of any customer overcharges. Existing law limits refunds to 70% of an overcharge, awarding a utility a bonus on the theory that overcharges were due to efficient services that came in below anticipated costs set through prior rates.⁷⁷
- **HB 2049**, which would have eliminated the cost recovery mechanism known as the Customer Credit Reinvestment Offset (CCRO).⁷⁸

The Virginia Coal and Energy Commission has the authority to “[m]ake recommendations to the Governor and General Assembly on its own initiative.” Therefore, a Community Outreach Subcommittee working on ratepayer protections could hear from utilities, regulators, customer advocates, and other interested parties to determine if there are opportunities for finding common ground.

⁷⁵ H.D. 1984, 2021 Leg., Spec. Sess. (Va. 2021); VIRGINIA CONSERVATION NETWORK, SUPPORT HB 1984 (2021), <http://www.vcnva.org/wp-content/uploads/2021/01/HB-1984.pdf>.

⁷⁶ H.D. 1914, 2021 Leg., Spec. Sess. (Va. 2021); VIRGINIA CONSERVATION NETWORK, SUPPORT HB *HB 1914* (2021), <http://www.vcnva.org/wp-content/uploads/2021/01/HB-2049.pdf>.

⁷⁷ H.D. 2160, 2021 Leg., Spec. Sess. (Va. 2021); VIRGINIA CONSERVATION NETWORK, SUPPORT HB *HB 2160* (2021), <http://www.vcnva.org/wp-content/uploads/2021/01/HB-2160.pdf>.

⁷⁸ H.D. 2049, 2021 Leg., Spec. Sess. (Va. 2021); VIRGINIA CONSERVATION NETWORK, SUPPORT HB 2049 (2021), <http://www.vcnva.org/wp-content/uploads/2021/01/HB-2049.pdf>.

IV. CONCLUSION

The Virginia Coal and Energy Commission operates with a limited budget, but its purview covers issues of wide-ranging public interest and need. Accordingly, this report has considered opportunities to expand the resources available to the Commission—without having any significant budgetary impact on the Commission’s funding from the General Assembly. The report has also reviewed some of the energy policy problems that have captured public and legislative attention in recent years.

This report’s chief recommendation is to establish workgroups to focus on those problems. Through workgroups, the Coal and Energy Commission might expand its capacity and create transparent, accessible spaces to find solutions. With the mission to “study all aspects of coal as an energy resource and endeavor to stimulate, encourage, promote, and assist in the development of renewable and alternative energy resources other than petroleum” and the authority to “make recommendations” to the General Assembly, the Coal and Energy Commission can help inform the future of energy policy for the Commonwealth.

APPENDIX A: STATUTES OF THE VIRGINIA COAL AND ENERGY COMMISSION

§ 30-188. Virginia Coal and Energy Commission; membership; terms; compensation and expenses; staff; quorum; voting on recommendations.

A. The Virginia Coal and Energy Commission (the Commission) is established in the legislative branch of state government. The Commission shall consist of 20 members to be appointed as follows: five members of the Senate to be appointed by the Senate Committee on Rules; eight members of the House of Delegates to be appointed by the Speaker of the House of Delegates; and seven nonlegislative citizen members to be appointed by the Governor. The nonlegislative citizen members shall be citizens of the Commonwealth and shall include representatives of industry, government, and groups or organizations identified with production and conservation of coal, natural gas, and energy.

B. Legislative members shall serve terms coincident with their terms of office. Members appointed by the Governor shall serve for terms of four years. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. Any member may be reappointed for successive terms.

C. The members of the Commission shall elect a chairman and vice-chairman annually from among its membership.

D. Legislative members of the Commission shall receive such compensation as provided in § 30-19.12 and nonlegislative citizen members shall receive such compensation as provided in § 2.2-2813 for their services. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for compensation and expenses of the members shall be provided from existing appropriations to the Commission.

E. Administrative staff support shall be provided by the Office of the Clerk of the Senate or the Office of the Clerk of the House of Delegates as may be appropriate for the house in which the chairman of the Commission serves. The Division of Legislative Services shall provide legal, research, policy analysis, and other services as requested by the Commission. All agencies of the Commonwealth shall assist the Commission upon request.

F. A majority of the members shall constitute a quorum. The meetings of the Commission shall be held at the call of the chairman or whenever a majority of the members so request.

G. No recommendation of the Commission shall be adopted if a majority of the Senate members or a majority of the House members appointed to the Commission (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the Commission.

§ 30-189. Powers and duties of Commission.

A. The Commission shall generally study all aspects of coal as an energy resource and endeavor to stimulate, encourage, promote, and assist in the development of renewable and alternative energy resources other than petroleum. The Commission shall have no authority to adopt regulations. All agencies of the Commonwealth shall assist the Commission in its work. In addition to the aforementioned general powers, the Commission shall also perform the following functions:

1. Act in an advisory capacity to the Governor and executive branch agencies upon energy-related matters;
2. Investigate and consider such questions and problems relating to the field of coal and energy utilization and alternative energy sources as may be submitted;
3. Make recommendations to the Governor and General Assembly on its own initiative;
4. Consult with applicable state agencies on all matters regarding energy conservation, including the promotion and implementation of initiatives for the public-at-large to conserve energy;
5. Endeavor to encourage research designed to further new and more extensive use of the coal as well as alternative and renewable energy resources of the Commonwealth;
6. Effectively disseminate any such proposals to groups and organizations, both state and local, so as to stimulate local governing bodies and private business initiative in the field of energy-related matters;
7. Coordinate its efforts with those of the Virginia Solar Energy Center established pursuant to § 45.1-391 and the Virginia Center for Coal and Energy Research established pursuant to Article 3 (§ 23.1-2623 et seq.) of Chapter 26 of Title 23.1;
8. Actively seek federal and other funds to be used to carry out its functions;
9. Seek to establish alternative fuel capability within the Commonwealth; and
10. Investigate and make recommendations regarding the development of nuclear power. The Commission shall periodically address (i) encouraging the reprocessing of spent fuel for reuse, (ii) incentives to encourage the study of nuclear engineering at public institutions of higher education in the Commonwealth, (iii) the storage of nuclear waste, (iv) the transportation of nuclear waste, (v) security needs of nuclear power plants, and (vi) on-site temporary storage facilities for spent nuclear fuel.

B. The Commission shall report its findings and recommendations to the General Assembly and the Governor on an annual basis. The Chairman of the Commission shall submit to the General Assembly and the Governor an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.