

ITEMS FOR CONSIDERATION
IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM
2020 VIRGINIA GENERAL ASSEMBLY

October 8, 2019

INDEX

ITEMS FOR INITIAL CONSIDERATION

Environment – Energy Efficiency	2
Environment – Vehicle Emissions Standards	5
Public Safety – Criminal Sentencing Reductions	8

ENVIRONMENT — ENERGY EFFICIENCY

PROPOSAL:

Add a position statement to the legislative program in support of legislation that would advance energy efficiency in Virginia in two ways: 1) enact an Energy Efficiency Resource Standard (EERS) to require electric utilities and natural gas distribution utilities in Virginia to meet annual, long-term targets for reducing energy consumption; and, 2) amend Virginia law to require utilities to meet their energy resource needs first through energy efficiency with lower costs and emissions.

SOURCE:

Environmental Quality Advisory Council (EQAC)
August 19, 2019

BACKGROUND:

Energy efficiency programs aim to decrease the consumption of energy, and have the potential to save ratepayers money, improve energy security, and help achieve climate goals. Virginia has been slower than some other states in embracing renewable energy requirements for electric utilities, opting instead to set goals rather than enforceable targets. As part of the integrated resource plans electric utilities are required to submit every three years documenting how the utility intends to meet the forecasted demand for electric generation in an adequate and sufficiently reliable manner, utilities are required to analyze the feasibility of investing in energy efficiency and demand-side management services (they can choose to propose energy efficiency programs as resources that can be used to satisfy the projected demand for electricity).

While some energy efficiency programs have been approved by the Virginia State Corporation Commission (SCC), they have typically been proposals crafted by the utilities themselves. It is important to note that investor-owned electric utilities and cooperative electric utilities can petition the SCC for approval to adjust their rates to cover the costs of designing, implementing, and operating energy efficiency programs, if the program is determined to be in the public interest.

Although Virginia has a goal to reduce electricity consumption by ten percent (from 2006 levels) by 2022, the Commonwealth currently does not require utilities to meet energy efficiency goals. However, in recent years, the General Assembly (GA) has taken some positive steps by requiring an increase in utilities' investment in energy efficiency programs. The 2018 Grid Transformation and Security Act (**SB 966** (Stanley)): modified the criteria used to assess the costs and benefits of energy efficiency programs (increasing the likelihood that such a program will be determined to be in the public interest, a requirement for program approval); requires substantial new spending on energy efficiency programs over the next decade (\$870 million by Dominion Energy and \$140 million by Appalachian Power); and, establishes a stakeholder process to inform the

utilities' energy efficiency portfolio, among many other provisions (including ending the freeze on energy utility rates). Legislation passed by the 2019 GA requires the SCC to provide justification for rejecting a utility's energy efficiency program (**HB 2292** (Sullivan)/**SB 1662** (Wagner)) and sets forth provisions for the stakeholder process (required by **SB 966** (2018)) for energy efficiency programs (**HB 2293** (Sullivan)/**SB 1605** (Ebbin)). Additionally, Governor Northam has also encouraged Dominion Energy and Appalachian Power to annually spend \$100 million and \$15 million, respectively, by 2019 on energy efficiency programs – as part of a September 16, 2019, Executive Order (directing state agencies to develop a plan to produce 30 percent of Virginia's electricity from renewable energy sources by 2030 and one hundred percent of Virginia's electricity from carbon-free sources by 2050) the Governor directed the Department of Mines, Minerals and Energy to provide recommendations to support this increased utility investment.

EQAC's proposal seeks to add to the legislative program support for two types of energy efficiency requirements for utilities. First, an Energy Efficiency Resource Standard (EERS) that would require electric utilities and natural gas distribution utilities in Virginia to achieve a certain amount of energy savings from energy efficiency measures. The EERS would include annual, long-term targets (starting at 1.5 percent and increasing over five years to 2.5 percent) that utilities would be required to meet, including a target to reduce peak electric demand. In addition, the utilities would be required to submit specific plans to meet the required energy efficiency targets, and the SCC would be authorized to order changes to plans that do not meet required targets. Second, efficiency first legislation would require utilities to meet their energy resource needs first through energy efficiency, rather than building new plants to generate new energy through natural gas or coal. Under such legislation, the SCC would determine if energy resources can be deferred or avoided, in whole or in part, through energy efficiency – if such a finding is made, the SCC would be required to order the implementation of such energy efficiency programs and resources, and reject approval of the new generation resource. To meet these requirements, the utilities could use a range of energy efficiency measures run by utilities or third-parties, such as: incentives for consumers to install equipment that meets or exceeds the EnergyStar standard or equivalent; modifications to the utilities' infrastructure (such as replacing all streetlights with LED lightbulbs); or, energy savings from weatherization programs.

The cost of energy efficiency measures can be difficult to analyze. While some utility-run energy efficiency programs may have an upfront cost that could be passed down to consumers, that cost may be cheaper over time than constructing new power plants to generate energy. It is also important to note that energy efficiency programs typically improve energy reliability, and do not have siting issues or require power lines or pipelines. Additionally, the cost of energy efficiency programs should be analyzed in the context of the long-term environmental benefit of reducing greenhouse gas emissions (the SCC does analyze the costs of energy efficiency programs to ensure that the benefits of approved measures outweigh the costs).

The GA has considered these proposals in previous years, most recently in 2019 when a similar bill (**HB 2294** (Sullivan)) failed to report from the House Committee on Commerce and Labor energy subcommittee. Legislation on this topic likely will be introduced in the 2020 GA. Such legislation has been opposed by Dominion Energy and Appalachian Power in previous years, because the utilities' business models rely on growth and sales, which runs counter to programs designed to reduce the consumption of energy.

RECOMMENDATION:

Fairfax County's legislative program has historically included support for energy efficiency measures, which is included in the draft 2020 position on Global Climate Change/Environmental Sustainability Initiatives. Though the current language captures EQAC's proposal, recommend adding support specifically for EERS and efficiency first legislation to identify specific actions the GA can take on energy efficiency – see below language highlighted in yellow. Also, direct staff to bring relevant legislation introduced during the 2020 GA to Legislative Committee for consideration by the Board of Supervisors.

Global Climate Change/Environmental Sustainability Initiatives

Support efforts to reduce the County's greenhouse gas emissions and operational demand for energy through efficiency, conservation, renewable energy, education, and other measures.

The basis for these efforts is Fairfax County's strategic direction and commitment to achieve environmental and energy goals, including those set forth in the County's 2017 Environmental Vision, 2009 Energy Policy, 2018 Operational Energy Strategy, and Comprehensive Plan.

Also, support incentives and opportunities for the expansion of renewable energy and energy efficiency initiatives, such as:

- Removal of barriers to municipal net metering, including allowing local governments to install solar facilities of up to five MW and use the energy generated on non-contiguous government-owned property. Legislation passed in 2019 established a pilot program that allows localities to use energy generated by a renewable energy project to be credited toward electric bills for other municipal accounts, though it does not allow the use of power purchase agreements (PPAs) in the pilot program which limits its usefulness to the County.
- Opportunities for consumers to purchase or generate renewable energy, including expanding the availability of net metering programs, which allow eligible customers to offset their power consumption by selling self-generated power back to the energy grid. Legislation in 2015 raised the cap on the amount of energy that may be net metered by eligible customers, but more flexibility is needed to maximize the cost-effectiveness of larger projects.
- Removal of barriers that impede third-party PPAs for renewable energy. PPAs can facilitate the adoption of renewable energy by reducing the up-front costs, thus assisting in reducing greenhouse gas emissions and other forms of pollution. Legislation was passed in 2013 to authorize a limited pilot program for PPAs, subject to a variety of restrictions and an overall cap of 50 MW on generation from PPAs.
- **Legislation requiring utilities to meet targets for reducing energy consumption (i.e., an energy efficiency resource standard) and using energy efficiency to decrease the need for new generation resources such as fossil fuels (i.e., an efficiency first requirement).**
- State income tax incentives for businesses or residents to defray a portion of the cost of new construction or improvements which save energy and mitigate adverse environmental impacts.
- Funding of renewable energy grant programs and incentives to assist the development and growth of energy businesses and technologies, such as renewable distributed energy generation. (*Updates and reaffirms previous position.*)

ENVIRONMENT — VEHICLE EMISSIONS STANDARDS

PROPOSAL:

Add a position to the state legislative program in support of legislation that would reduce emissions from the transportation sector in Virginia by adopting the California Low Emissions Vehicle (LEV) and Zero Emissions Vehicle (ZEV) standards.

SOURCE:

Environmental Quality Advisory Council (EQAC)
August 19, 2019

BACKGROUND:

Under the federal Clean Air Act (CAA), since 1970, California has had authority to set vehicle emissions standards more strict than federal standards, if the federal government has issued California a waiver. California was granted this authority because, prior to the enactment of the CAA, the state had been developing innovative laws and standards to address its unique air pollution problems, particularly the dangerous smog in the Los Angeles air basin caused by enclosed topography, a rapidly growing population and a warm climate. The CAA does not allow other states to set their own standards. As of March 2019, thirteen states and the District of Columbia had adopted the California standards in whole or in part, either by an affirmative vote of their state legislature or an executive order – Virginia has not yet adopted the California standards.

California has received numerous federal waivers over the years, and most recently updated their standards in 2012 with a package of regulations referred to as the Advanced Clean Cars (ACC) program, which was developed in coordination with the Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration (NHTSA). The ACC includes the Low Emission Vehicle (LEV) III Criteria (a fuel economy standard), the LEV III GHG (a greenhouse gas emissions standard), and the Zero Emission Vehicle (ZEV) standard (a requirement that all manufacturers selling vehicles in the state offer a specific number of ZEV for sale).

States that do not elect to follow the California standard must comply with the federal standards for vehicle emissions. During the Obama Administration, the federal standards began to more closely resemble the California standards, and in 2012 the federal government finalized fuel economy (also known as Corporate Average Fuel Economy, or CAFE) and greenhouse gas (GHG) standards that were substantially similar to California's ACC for 2017-2025 model year passenger vehicles and light trucks (the federal government did not adopt a ZEV standard). By harmonizing the federal and California standards, automakers were able to design and manufacture vehicles to a single target. In 2017, the EPA affirmed that these standards were appropriate based on extensive data.

However, the Trump Administration has taken a different view of emissions standards, and in April 2018 the EPA reversed course, announcing that the federal standards for model year 2022-2025 vehicles were too stringent, and initiating a joint process with the NHTSA to develop new GHG emissions and CAFE standards. Subsequently, 18 states (including Virginia) and the District of Columbia sued the EPA in May 2018 over its proposed rollback of the federal standards (this lawsuit is still pending). In August 2018, the EPA and NHTSA announced the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule which would retain the model year 2020 CAFE and GHG emissions standards through model year 2026 (the below chart compares the 2012 federal emissions standards to the 2018 proposed standards). Part of the proposed SAFE Rule included two actions aimed at ensuring one program for CAFE and GHG standards: withdrawing California's waiver and issuing regulatory text that explicitly declares that federal law preempts state and local tailpipe GHG emissions standards and ZEV mandates. The Trump Administration contends that the proposed SAFE Rule will result in safer and more affordable cars for consumers, arguing that the more stringent standards set by the Obama Administration raised the cost and decreased the supply of newer, safer vehicles.

	Federal Emissions Standards, 2012*	Proposed SAFE Rule, 2018*
CAFE Standard	54.5 MPG fleetwide average fuel economy by 2025; impacts model years 2017-2025.	37 MPG average fuel economy by 2020; impacts model years 2021 – 2026.
GHG Emissions Standard	Require 163 grams/mile of carbon dioxide (CO ₂) in model year 2025.*	Locks in GHG emissions standards (213 grams/mile of CO ₂) at 2020 levels for model years 2021-2026.

**Figures represent averages for combined cars and trucks.*

In September 2019, the EPA and NHTSA took the first step toward finalizing the SAFE Rule by announcing the One National Program, a final rule advancing the two aforementioned actions related to preemption, which will take effect in November 2019 (a final rule regarding federal CAFE and GHG standards has not been issued yet). The Trump Administration cited the July 2019 agreement between California and four automakers to increase average fuel standards for new vehicles to nearly 50 miles per gallon by model year 2026 as evidence of the rule's necessity. The Department of Justice also opened an antitrust investigation into California's agreement with the automakers, as tensions have escalated between California and the Trump Administration (which has also threatened to withhold highway funding from California if the state fails to improve its plan to address air pollution).

A coalition of attorneys general (including Virginia Attorney General Mark Herring) have filed a lawsuit challenging the federal preemption regulation, and the ability of states to adopt the California standards will likely be decided by the judiciary. Despite that, the Governors of Minnesota and New Mexico recently announced their intention to adopt

the California standards in 2020 or later (such action requires approval by the respective state legislatures, which has yet to occur in both states). In Virginia, the legislature has not considered this issue to date, but the Northam Administration expressed support for adopting the California standards in Virginia's Energy Plan (which was released in October 2018, prior to the issuance of the final federal preemption rule).

Similarly, EQAC's proposal to add support for adopting California's standards to the state legislative program was submitted before the final federal preemption rule was issued. It is unclear whether such legislation will come before the GA in 2020 given the recent events at the federal level.

RECOMMENDATION:

Fairfax County has historically supported efforts to reduce GHG emissions through Cool Counties and related initiatives, including the draft Global Climate Change/Environmental Sustainability Initiatives position in the legislative program and a 2007 request that the Commonwealth consider adopting the California car standards (which California has since updated). Direct staff to monitor this issue, including opportunities for public comment, and provide updates to the Board of Supervisors as they become available.

PUBLIC SAFETY – CRIMINAL SENTENCING REDUCTIONS

PROPOSAL:

Add to the state legislative position on Dangerous Weapons support for the concepts included in **HB 4014** (Yancey) (2019 GA Special Session).

SOURCE:

Fairfax County Board of Supervisors
September 17, 2019

BACKGROUND:

During the 2019 General Assembly (GA) Special Session on gun legislation, Delegate Yancey (Newport News) introduced **HB 4014**, which would expand the instances in which a Virginia sentencing court may reduce a convicted person's sentence. Under current Virginia law, upon motion by the Commonwealth's Attorney, a sentencing court may reduce an offender's sentence if the offender, after sentencing, provides substantial assistance in investigating or prosecuting another person for the following offenses: murder, mob crimes, kidnapping, malicious assault or bodily wounding, robbery, carjacking, felony sexual assault, certain arson crimes, or certain drug distribution charges. If the motion is made more than one year after entry of the final judgment order, a sentencing reduction can only be granted if the offender's assistance involved information that either: was not known to the offender until more than one year after sentencing (for example, pertaining to a crime unrelated to the charge for which the offender was sentenced); did not become useful to the Commonwealth until more than one year after sentencing; or, its usefulness could not have been anticipated by the offender until more than one year after sentencing. This law was enacted by the 2018 GA (**HB 188** (Collins)/**SB 35** (Stanley)), and was an initiative of the Virginia Criminal Justice Conference (a group of prosecutors and defense attorneys) to incentivize convicted persons to share information with prosecutors.

HB 4014 (Yancey) (2019 GA Special Session) would allow a convicted person's sentence to be reduced if the sentencing court determines that the person provided substantial assistance in the investigation or prosecution of a case involving stolen firearms, criminal street gang participation, or recruitment for criminal street gangs. **HB 4014** is intended to incentivize individuals with knowledge of crimes to come forward with information and curb the supply of stolen firearms, which would not be affected by legislation pertaining to the legal purchase of firearms, such as limiting handgun purchases to one a month.

At the federal level, a broader version of this law may be used in federal cases involving persons who provide substantial assistance to the federal government's investigation or prosecution of others. Federal Rule of Criminal Procedure 35(b) permits a federal court, upon the government's motion, to impose a new, reduced sentence that takes into account post-sentencing substantial assistance – that new sentence may be lower than

the recommended guideline range and any statutory mandatory minimum penalty, and the rule is not charge or crime specific. Additionally, at the federal level, there are other mechanisms through which sentences can be reduced at the time of sentencing, and at the state level in Virginia, opportunities for sentencing reductions at the time of a guilty plea or sentencing hearing are also available.

Related legislation introduced during the 2019 GA Special Session includes **SB 4028** (Stanley), which is identical to **HB 4014**, and a more narrow proposal, **SB 4027** (Stanley), which would allow a Virginia sentencing court to reduce a convicted person's sentence if the person provides substantial assistance in the investigation or prosecution of cases involving criminal street gang participation or recruitment. All firearm-related legislation introduced during the 2019 Special Session, including the proposals related to sentence reductions, were referred to the Virginia State Crime Commission (VSCC) for further study. The VSCC convened in August for a two-day meeting during which Commissioners received a number of presentations and public comment, and legislators presented their bills. The Commission is scheduled to receive a presentation on mass killings and gun violence at their November 12, 2019, meeting, and will subsequently submit a report to the GA. The VSCC also will adopt a legislative package at their December 11, 2019, meeting.

RECOMMENDATION:

Direct staff to reach out to stakeholders and gather relevant data to assess how this proposal would be utilized in Fairfax County.