



County of Fairfax, Virginia

MEMORANDUM

DATE: July 19, 2019

TO: Claudia Arko, Fairfax County Legislative Director

FROM: Stella M. Koch, Chairman *Stella M. Koch*
Environmental Quality Advisory Council

SUBJECT: Fairfax County State Legislative Program for 2020

The Environmental Quality Advisory Council (EQAC) has prepared these recommendations to be considered for incorporation into the County's legislative positions for 2020.

First, EQAC strongly supports the summary statement on "Global Climate Change/Environmental Sustainability" contained in bold on page 9 of the County's 2019 Legislative Program (see Attachment A). This statement is particularly important: (1) in light of the finding in the Board Matter on "Fairfax Green Initiatives" about the urgent nature of climate change; and (2) the Board's commitment to develop a Community-Wide Energy and Climate Action Plan.

As noted in Attachment A, we believe that one refinement is necessary in this language – to add the phrase "other measures." This language is necessary because some important state legislation to reduce greenhouse gas (GHG) emissions (e.g., legislation to authorize Virginia to become a member of the Regional Greenhouse Gas Initiative) is not clearly encompassed by the existing language.

We also believe that the language on Power Purchase Agreements in the current position statement is imprecise and should be clarified. Proposed changes to accomplish this goal also are included in Attachment A.

Although the Council has drafted position statements on specific legislation, we want to emphasize that our support is not limited to these specific initiatives. Rather, it encompasses the wide range of state legislation necessary to meet the summary statement on Global Climate Change/Environmental Sustainability articulated by the Board in its 2018 Legislative Program. Three major types of legislation are necessary to meet the objectives of this summary statement, as follows:

- (1) removing legislative barriers that impede the ability of the county government, its residents, and its businesses to achieve GHG reductions and related cost savings;



- (2) supporting increases in energy efficiency and renewable energy through other measures, such as new financing tools; and
- (3) overcoming impediments to clean energy measures posed by the Dillon Rule (e.g., weak State building codes). Language highlighting this last point might be considered as an update to the “Governance” section of the county’s 2019 Legislative Program (pp. 6-7).

Second, EQAC supports the two attached position statements:

- (1) Legislation establishing an Energy Efficiency Resource Standard and prioritizing energy efficiency (See Attachment B) – As described in greater detail in the Attachment, this legislation would:
 - require electric utilities and natural gas distribution utilities in Virginia to meet annual, long-term targets for reducing energy consumption; and
 - amend existing Virginia law to require that utilities meet their energy resource needs first through energy efficiency with lower costs and emissions.
- (2) Legislation adopting the Advanced Clean Car Standards (See Attachment C) – As described in detail in the Attachment, this legislation would ensure that vehicles sold in Virginia would meet the California Low Emissions Vehicle (LEV) standards and the California Zero Emissions Vehicle (ZEV) standards. This approach, which has been adopted by 14 states and the District of Columbia, is designed to protect Virginia against any possible rollback in Federal vehicle emissions and efficiency standards.

Third, it is anticipated that the study on “Increased Recycling, Reduce, and Reuse” that is being conducted by the Department of Public Works and Environmental Services will indicate the need for legislative changes to improve the county’s practices in that area. We request that these recommendations be considered in the coming legislative session.

Fourth, the Council wants to reiterate its continued support for two specific measures that it endorsed in position statements last year:

- (1) Solar Freedom Legislation, which was strongly advocated by the Board of Supervisors, including testimony in the House of Delegates by the Chair of the Board’s Legislative Committee. This legislation (HB2329 and SB1456 in the 2019 General Assembly session) would have removed eight specific legal barriers to the development of solar energy in Virginia. If one of these barriers - the current 50MW limit on power purchase agreements in Dominion territory – is not removed in the 2020 legislative session, it will limit the ability of Fairfax County and other Virginia localities from taking full advantage of the county’s recent solar Request for Proposals. The removal of several other legal barriers would allow the county to install at least 5MW of solar on its Lorton Landfill in an economically feasible manner.
- (2) Legislation on Disposable Bag Litter Abatement – This proposal would provide Fairfax County the ability to consider disposable bag litter abatement as a local government option.

Thank you for your consideration of these recommendations.

Claudia Arko

July 19, 2019

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cc: Bryan Hill, County Executive
Joseph Mondoro, Chief Financial Officer
Kambiz Agazi, Environmental and Energy Coordinator

Attachments (3)

ATTACHMENT A
EXCERPT FROM 2019 FAIRFAX COUNTY LEGISLATIVE PROGRAM (Page 9)

Adopted December 4, 2018
with 2019 EQAC Suggested Edits in Track Change Format

Environment

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.~~

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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.
- 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 power purchase agreements (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 in the service area of Dominion Energy,~~ subject to ~~a~~ variety of restrictions and an overall cap of 50 MW on generation ~~from PPAs.~~
- 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.

Deleted: Increased flexibility in the restrictions governing

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(Updates and reaffirms previous position.)

Land Conservation

Support the conservation of open space, which protects vital ecological resources and the environment, provides recreational opportunities, and improves the quality of life.

The County also supports state incentives that promote donations to park authorities or associated foundations, the prioritization of the Virginia Land Preservation Tax Credit to encourage the preservation of land for public use, and increased funding for the development and rehabilitation of park infrastructure, including trails, shelters, and fields. In addition to other benefits, the preservation of open space contributes to watershed protection, an important issue as the state works to reduce nutrient pollution in the Chesapeake Bay. *(Updates and reaffirms previous position.)*

Reducing Environmental Contamination from Plastic and Paper Bags

Support legislation or other efforts which would encourage the use of reusable shopping bags, consistent with the County's waste reduction goals and environmental stewardship efforts.

As in previous sessions, it is anticipated that legislation to ban plastic bags or impose a fee for their use may be introduced again in 2019. Such legislation would need to be examined by the County for efficacy, cost, and ease of administration. *(Updates and reaffirms previous position.)*

POSITION STATEMENT FORM

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

Support for Legislation Establishing an Energy Efficiency Resource Standard and Prioritizing Energy Efficiency

PROPOSAL:

Support 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. The target for electric utilities would start at 1.5% and increase over five years to 2.5%. In addition, the legislation would contain a target for reducing peak electric demand. Under such legislation, utilities must submit specific plans to meet the required energy efficiency targets, and the State Corporation Commission (SCC) will order changes to any plans that do not meet required targets.
- (2) Amend existing Virginia law to require that utilities meet their energy resource needs first through energy efficiency with lower costs and emissions. Under such legislation, the SCC must determine in any proceeding if one or more energy resources can be deferred or avoided, in whole or in part, through energy efficiency programs and measures with lower costs and emissions. If such a finding is made, then the SCC is required to order the implement of such energy efficiency programs and resources and reject approval of the new generation resource, as appropriate.

SOURCE: Environmental Quality Advisory Council, August 14, 2019.

BACKGROUND:

For several years, Del. Rip Sullivan has introduced legislation including the two key elements described in this position statement. In 2019, Sullivan's legislation was HB2294. As in previous years, the energy subcommittee of the House Commerce and Labor Committee rejected the 2019 legislation.

The need for this legislation is highlighted by the energy efficiency record of Virginia's electric utilities compared to other states Dominion Energy ranked 50th (next to last) among the 51 largest electric utilities in the U.S. in its energy efficiency record, according to a 2017 report by the American Council for an Energy Efficient Economy. Moreover, in 2017, the electric utility's research organization reported that Virginia had captured only 2% of its energy efficiency potential. Although Virginia currently has a voluntary energy efficiency standard, it has not been met.

Fairfax County would benefit from an improved energy efficiency record of its electric utility in

two major ways:

- (1) Lower Electric Bills – According to the National Action Plan on Energy Efficiency published by the U.S. EPA, energy efficiency programs help defer investments in new power generation and thereby lower the total cost of electricity (compared to the cost of building new power plants).
- (2) Lower Greenhouse Gas (GHG) Emissions – without strong reductions in electric use, it will be difficult to meet the county’s GHG reduction goals. A major component of emissions in Fairfax County is related to indirect GHG emissions from electricity and natural gas use in buildings. Therefore, increases in energy efficiency will result in GHG emission reductions.

STAFF RECOMMENDATION:

(Do not fill out-- This will be indicated by the Legislative Director and County Executive)

POSITION STATEMENT INFORMATION SHEET

(Supplemental background information to be used by staff)

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

Support for Legislation Establishing an Energy Efficiency Resource Standard and Prioritizing Energy Efficiency

ADDITIONAL BACKGROUND INFORMATION:

(Additional information may be necessary to fully develop the idea. Please assume that government relations staff may need additional technical information to fully explain the proposal and the necessity for the proposal.)

An Energy Efficiency Resource Standard (EERS) is similar in concept to a renewable portfolio standard (RPS). While a RPS requires that electric utilities generate a certain percentage of their electricity from renewable sources, an EERS requires that they achieve a certain amount of energy savings from energy efficiency measures. As of January 2017, 26 states have EERS policies in place. The strongest EERS requirements are in Massachusetts and Rhode Island, which require more than 2.5% new savings annually.

Efficiency first legislation in electric generation has been adopted in several states, including Maine, Rhode Island, and California. These requirements typically come into play during a proceeding of the state utility commission when an electric utility comes forward to seek a certificate of public convenience and necessity to build a new generating plant. For example, Maine's "loading order" legislation requires utilities to use energy efficiency before any other traditional energy resource (35-A MRS 3210-C (4)). Specifically, this legislation states that:

Priority of capacity resources. In selecting capacity resources for contracting pursuant to subsection 3, the commission shall apply the following standards.

A. The commission shall select capacity resources that are competitive and the lowest price when compared to other available offers for capacity resources of the same or similar contract duration or terms.

B. Among capacity resources meeting the standard in paragraph A, the commission shall choose among capacity resources in the following order of priority:

- (1) New interruptible, demand response or energy efficiency capacity resources located in this State;
- (2) New renewable capacity resources located in this State;
- (3) New capacity resources with no net emission of greenhouse gases;
- (4) New nonrenewable capacity resources located in this State. The commission shall give preference to new nonrenewable capacity resources with no net emission of greenhouse gases;
- (5) Capacity resources that enhance the reliability of the electric grid of this State. The commission shall give preference to capacity resources with no net emission of greenhouse gases; and
- (6) Other capacity resources.

It is expected that Del. Sullivan and other legislators will introduce legislation accomplishing the goals of HB2294 in the 2020 General Assembly session. In light of recent U.S. and international reports highlighting the urgency of climate change, it is likely that some

refinements will be made to strengthen the EERS legislation. For example, the energy efficiency targets in Del. Sullivan's legislation, as introduced in recent years, started at 0.25% in 2020-21 and increased in biennial increments of 0.25% until 2034.

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS:

(List any organizations or groups, if any, which might be in favor of or against the proposed position)

Legislation establishing an Energy Efficiency Resource Standard and prioritizing energy efficiency (as discussed above) is a major priority of the Virginia Chapter of the Sierra Club and is expected to be a priority of the Virginia Conservation Network, a coalition of more than 100 environmental organizations across Virginia. The Southern Poverty Law Center, Appalachian Voices, the Southern Environmental Law Center, the Chesapeake Climate Action Network, and Interfaith Power & Light also specific organization that are likely to support the legislation.

In addition, as of June, EERS legislation is currently under consideration as a priority item by the Defossilization/Energy Efficiency Working Group of the Green New Deal Virginia Coalition. This coalition is a group of more than 60 civil rights, faith-based, anti-poverty, environmental and other public interest organizations in Virginia.

In the past, Virginia investor-owned utilities (Dominion Energy, Appalachian Power) and electric cooperatives have opposed this legislation.

STAFF CONTACT PERSONS:

Kambiz Agazi, Office of Environmental and Energy Coordination
Susan Hafeli, Office of Environmental and Energy Coordination

POSITION STATEMENT FORM

GENERAL SUBJECT AREA -- TITLE OF PROPOSAL:

Support for Adoption of California Advanced Clean Cars Standards

PROPOSAL:

Support legislation that would reduce emissions from the transportation sector in Virginia by:

1. Adopting the California Low Emissions Vehicle (LEV) standards for all new vehicles sold in the Commonwealth of Virginia. By adopting these standards, emissions of air pollutants and greenhouse gases will be reduced, and average fuel efficiency of vehicles sold in Virginia will be increased, thereby reducing vehicle operating costs for consumers while improving the environment and reducing health-related local impacts of vehicle emissions.
2. Adopting the California Zero Emissions Vehicle (ZEV) standards to accelerate the adoption of ZEV purchases in the Commonwealth of Virginia. By adopting these standards, greater numbers of ZEVs will be sold on an accelerated schedule, thereby further reducing emissions over the LEV standards. In addition, as ZEVs have lower fuel and operating costs compared to traditional vehicles, consumers will experience life-cycle savings.¹

Additionally, adopting the California auto emissions standards would protect Virginia against the current Administration's proposed rollback of Federal vehicle emissions and efficiency standards. As discussed below, the Federal standards are currently equivalent to the California standards.

As of March 2019, 14 states (including Maryland) and the District of Columbia had adopted the California standards.

SOURCE: Environmental Quality Advisory Council, August 14, 2019.

BACKGROUND:

This legislation is important to the county to meet its greenhouse gas (GHG) emission reduction goals in the 2017 Environmental Vision and to support the February 2019 Board Matter on Fairfax Green Initiatives. As of 2015, transportation and mobile sources accounted for 43% of the county's GHG emissions, and the vehicle emissions standards are the most important tool to reduce such emissions.

¹ University of Central Florida Electric Vehicle Transportation Center, *Electric Vehicle Lifecycle Cost Analysis* (Cocoa, FL: EVTC, 2017), Figure 1, available at <http://fsec.ucf.edu/en/publications/pdf/fsec-cr-2053-17.pdf>

No legislation has been previously introduced on this topic, but it is supported in Governor Northam's 2018 Virginia Energy Plan, which includes a recommendation that "The Commonwealth should adopt the [California] Advanced Clean Cars (ACC) program."² The Energy Plan emphasizes that: "[a]dopting the LEV standards is especially important in light of recent federal action to roll back fuel efficiency standards, and a ZEV program would increase access to a wide range of EV models."

Earlier this year, Attorney General Herring joined Attorneys General from 16 other states and the District of Columbia in suing the EPA over its reconsideration of the current Federal emissions standards which set a single national standard for vehicle emissions. While this action does not commit Virginia to adopting the California standards, it does signal the Commonwealth's desire to maintain the current emissions requirement, which is in line with adopting the California standards.

In addition, in comments strongly opposing the EPA's proposed rollback of fuel efficiency requirements, Virginia Delegate Schuyler VanValkenburg (District 72) emphasized that: "President Trump's proposal to roll back the successful, money-saving clean car standards that help fight pollution, combat climate change, and spur innovation and investment in the U.S. auto industry will take us in the wrong direction. That is why Virginia's leaders must strongly oppose [the] rollback, as well as any attacks . . . on the Clean Air Act established authority of states to adopt stronger than federal tailpipe pollution standards to protect the health of their residents. Our health and economy are on the line."³ It is reasonable to expect that Del. VanValkenburg would be supportive of this legislation.

STAFF RECOMMENDATION:

(Do not fill out-- This will be indicated by the Legislative Director and County Executive)

² Virginia Department of Mines, Minerals, and Energy, Virginia Energy Plan (Richmond, VA: DMME, 2018), pg. 41, available at <https://www.governor.virginia.gov/media/governorvirginiagov/secretary-of-commerce-and-trade/2018-Virginia-Energy-Plan.pdf>

³ Virginia Clean Cities, Virginia Elected Officials and Community Leaders Speak Out Against Rolling Back America's Clean Car Standards (Richmond, VA: VCC, 2019), available at <http://vacleancities.org/virginia-elected-officials-and-community-leaders-speak-out-against-rolling-back-americas-clean-car-standards/>

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Clean Air Act Requirements and California Waiver

Under the Clean Air Act (CAA), the U.S. EPA is charged with regulating emissions from light duty vehicles (LDVs), and it has done so by setting standards for new vehicles. Section 209 of the CAA includes a provision to allow the State of California to set its own emissions standards because it had already implemented such standards in 1966 and established the California Air Resources Board (CARB) to oversee the standard setting process. Section 209 holds that California may set its own emissions standards as long as they are more stringent than the Federal standards, and the EPA has issued the State a waiver. Section 177 of the CAA also allows other states to adopt California's emissions standards without EPA approval. As of March 2019, an additional 13 states (known as Section 177 states) and the District of Columbia had adopted the California standards.

Harmonized Federal Emissions Standards

For many years, vehicles sold in California (and Section 177 states) were subject to more stringent emissions standards than those sold in the rest of the country, leading to inefficiencies for auto manufacturers who would often produce two different versions of the same vehicle. To address this situation, and to take advantage of the benefits offered by more stringent standards, in 2010 the EPA and the National Highway Transportation Safety Administration (NHTSA) published the first harmonized standards that would eliminate the need to manufacture to different standards for sale in California. These standards set GHG emissions levels for new LDVs in model years 2012 through 2016, with emissions limits declining each year. EPA estimated that over the lifetime of the vehicles sold during 2012-2016, the standards would reduce U.S. greenhouse gas emissions by 960 million metric tons and save 1.8 billion barrels of oil, and consumers would save over \$3,000 in fuel costs over the lifetime of a 2016 model year vehicle.⁴

In 2012, EPA and NHTSA finalized the second set of harmonized national standards for model years 2017-2025. These standards would nearly double the fuel efficiency of new vehicles by 2025 to 54.5 miles per gallon, resulting in a significant reduction in GHG emissions. These new standards were also used as the basis for the Government of Canada's updated standards.

⁴ <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100AKHW.PDF?Dockkey=P100AKHW.PDF>

Rollback of Standards and Denial of California Waiver

In January 2017, the EPA conducted a midterm review of the standards developed in 2012 and determined that the standard were still appropriate – a determination with which CARB concurred. However, in March 2017, after a change in Administration, the EPA announced that it would revisit the midterm review. In April 2018, the EPA issued a reconsideration which held that the standards were too stringent, leading a group of 17 States and the District of Columbia to sue the EPA in Federal Court challenging the decision to reconsider the midterm review. The group of states, which includes Virginia, represents over 40 percent of the market for new car sales.

As a result of the findings of the reconsidered midterm review, the EPA and NHTSA in August 2018 jointly published a new proposed rule that would freeze the standards at 2020 levels (43.7 miles per gallon) through 2026. At the same time, the EPA proposed to revoke California's waiver to set more stringent standards. Should the EPA decide to roll back standards as proposed, the Federal and California standards would no longer be harmonized, and the Section 177 states (which combined represent more than 35% of new LDV sales) would continue to follow the more strict California standards.

California Advanced Clean Cars Program

The California Advanced Clean Cars Program is a package of 3 regulations:

- LEV (Low Emission Vehicle) III Criteria – Aimed at reducing smog-forming pollution, this regulation will result in model year 2025 cars emitting 75% fewer pollutants than model year 2012 cars.
- LEV III GHG – Aimed at reducing GHG emissions, this regulation will result in model year 2025 cars having 40% lower GHG emissions than model year 2012 cars.
- ZEV (Zero-Emission Vehicle) – Aimed at increasing ZEV sales, this regulation will require all manufacturers selling vehicles in California to offer for sale a specific number of ZEVs, and is expected to result in 8% of 2025 new car sales being ZEVs (electric, hydrogen fuel cell, plug-in hybrid).

Under Section 177, states may adopt one of more of these regulations, and to date, four have adopted the LEV III Criteria and LEV III GHG standards, and ten plus the District of Columbia have adopted the entire package of standards (LEV III Criteria, LEV III GHG, and ZEV).

If California is denied its waiver from the EPA, it has announced its intent to mount a court challenge to EPA's action.

POSSIBLE SUPPORT OR OPPOSITION BY ORGANIZATIONS:

(List any organizations or groups, if any, which might be in favor of or against the proposed position)

Groups that have expressed their support for the legislation include the Virginia Conservation Network, a coalition of more than 100 environmental groups across Virginia and the Virginia Chapter of the Sierra Club..

STAFF CONTACT PERSON(S):

Kambiz Agazi, Office of Environmental and Energy Coordination
Susan Hafeli, Office of Environmental and Energy Coordination