



# COMMONWEALTH OF VIRGINIA

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March 31, 2010

The Honorable Danny W. Marshall, III  
Member, House of Delegates  
P.O. Box 439  
Danville, Virginia 24543

Dear Delegate Marshall:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## **Issue Presented**

You note that the effects of uranium mining in Virginia would impact only a few select localities, including your region. Therefore, you seek guidance concerning a bill that would require a supermajority vote by the General Assembly to lift the current moratorium on uranium mining.

## **Response**

It is my opinion that the Constitution of Virginia must be amended prior to the enactment of any bill that would require a “super majority” vote to lift the moratorium on uranium mining.

## **Applicable Law and Discussion**

Pursuant to § 45.1-283, the General Assembly has effectively banned the mining of uranium in Virginia. Section 45.1-283 prohibits “any agency of the Commonwealth” from accepting “permit applications for uranium mining ... until a program for permitting uranium mining is established by statute.”<sup>1</sup> I find no statutes that have established a program for uranium mining. The only statutory program in existence related to uranium is limited to exploratory activity.<sup>2</sup>

The Virginia Constitution provides that bills become law when “a majority of those voting in each house, which majority shall include at least two-fifths of the members elected to that house,” vote in favor

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<sup>1</sup>See also 1982 Va. Acts ch. 269, at 426, 427 (enacting § 42.1-272 (not set out in Code), which declares public policy that improper and unregulated uranium mining can adversely affect health, safety, and general welfare of Commonwealth’s citizens; noting also that additional statutes may be necessary to assure that any such mining does not adversely affect environment or public health and safety).

<sup>2</sup>See VA. CODE ANN. § 45.1-274(A) (2002) (requiring permit to commence exploration activity “as defined herein”). Section 45.1-273 defines “exploration activity” as that “limited to the drilling of test holes or stratigraphic or core holes ... for the purpose of determining the location, quantity, or quality of uranium ore.”

The Honorable Danny Marshall  
March 31, 2010  
Page 2

of the bill.<sup>3</sup> Given this express constitutional requirement, an amendment to the Constitution would be required to impose a “super majority” vote on any particular subject. Without such an amendment, the Constitution authorizes the General Assembly to overturn the existing ban by majority vote. Therefore, any law requiring a supermajority vote would be ineffectual absent such amendment. “Where statutory enactments ... come into conflict with constitutional principles, the latter must prevail.”<sup>4</sup>

### Conclusion

Accordingly, it is my opinion that the Constitution of Virginia must be amended prior to the enactment of any bill that would require a “super majority” vote to lift the moratorium on uranium mining.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken Cuccinelli, II". The signature is written in a cursive style with a horizontal line underneath the name.

Kenneth T. Cuccinelli, II  
Attorney General

1:485; 1:941/10-021

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<sup>3</sup>VA. CONST. art. IV, § 11(d). I note that bills on certain subjects, such as ones creating or establishing a new office, require “the affirmative vote of a majority of all the members elected to each house.” *Id.*

<sup>4</sup>Commonwealth v. Owens-Corning Fiberglass Corp., 238 Va. 595, 600, 385 S.E.2d 865, 868 (1989).